

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No.

L. P. STEUART & BRO., INC., PETITIONER,

vs.

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF
PRICE ADMINISTRATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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[fol. 1] [Caption omitted]

[fol. 2] [File endorsement omitted]

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA**

Civil Action No. 22634

L. P. STEUART & BRO., INC., a Corporation, Plaintiff,

v.

CHESTER BOWLES, Administrator, Office of Price Administration, Federal Office Building No. 1, Washington, D. C.; Robert K. Thompson, District Director, District of Columbia, Office of Price Administration, 5601 Connecticut Avenue, N. W., Washington, D. C.; John L. Laskey, District Enforcement Attorney, District of Columbia, Office of Price Administration, 5601 Connecticut Avenue, N. W., Washington, D. C., Defendants

COMPLAINT FOR TEMPORARY RESTRAINING ORDER, INJUNCTION PENDENTE LITE AND PERMANENT INJUNCTION—Filed January 7, 1944

The complaint of L. P. Steuart & Bro., Inc., against the defendants, Chester Bowles, Administrator; Robert K. Thompson, District Director, District of Columbia; John L. Laskey, District Enforcement Attorney, District of Columbia, Office of Price Administration, respectfully shows the Court:

1. That plaintiff is a corporation organized under the laws of the State of Delaware with its principal office and place of business located at 138 Twelfth Street, N. E., in the City of Washington, District of Columbia. The defendant Chester Bowles is the Administrator of the Office of Price Administration, the defendant Robert K. Thompson is the District Director, Office of Price Administration, for the District of Columbia, the defendant John L. Laskey is the District Enforcement Attorney, Office of Price Administration, [fol. 3] tion, for the District of Columbia. Each of the defendants is sued in his official capacity above set forth. The defendants and each of them, in their official capacities,

have the duty, among others, of enforcing the regulations, rules and orders of the Office of Price Administration in effect in the District of Columbia. This action is for a temporary restraining order, injunction *pendente lite* and permanent injunction restraining the defendants from enforcing or attempting to enforce a purported order bearing date December 31, 1943, of one Talbot Smith, now resigned, but on December 31, 1943, Hearing Administrator of the Office of Price Administration (said order hereinafter being more fully described), which action is within the jurisdiction of this Court.

2. The plaintiff is and has been since, to wit, the year 1904, engaged in the retail fuel business in the District of Columbia and, since, to wit, 1928 has been and now is engaged in the retailing of various types of fuel oil, and other products. In the course of its fuel oil business the plaintiff has invested approximately the sum of \$750,000.00 in the District of Columbia in railroad sidings, tracks, wharves, docks, trucks, pumps, heating equipment, office equipment, storage fuel tanks, and other facilities necessary and useful for the conduct of its retail fuel oil business. Prior to the heating season of 1942-1943, the plaintiff at great expense increased its unloading facilities, storage facilities, and delivery facilities within the District of Columbia in compliance with recommendations made to retail fuel oil dealers in the limitation area by the Petroleum Administrator for War. In increasing its facilities as aforesaid the plaintiff has invested the sum of approximately \$50,000.00. The other retail fuel oil dealers serving the District of Columbia and vicinity failed and neglected to expand their facilities as requested by the Petroleum Administrator for [fol. 4] War as aforesaid, and, by reason of the plaintiff's compliance with the recommendations of the said Petroleum Administrator for War the plaintiff during the heating season of 1942-1943, was, and now is better able to serve the retail purchasing public, and the Government of the United States, with fuel oil than are the plaintiff's competitors.

3. On or about the 6th day of February, 1943, there were issued by the then Administrator, Office of Price Administration, Prentiss M. Brown, in his capacity as Administrator as aforesaid, purporting to act pursuant to authority purported to have been conferred upon him by Executive Orders 9125 and 9280, War Production Board Directive No.

1 as Supplemented, and Food Directive No. 1 of the Secretary of Agriculture, issued certain regulations designated by him as "Part 1300—Procedure (Procedural Regulation 4)" and hereinafter referred to as Procedural Regulation 4. Copy of said Procedural Regulation 4 is attached hereto marked Exhibit 1, and prayed to be read and considered as a part hereof. The said Procedural Regulation 4 describes its purpose and application in Section 1300.151 as follows:

"It is the purpose of this regulation to prescribe the procedure used by the Office of Price Administration in the issuance of rationing suspension orders. The regulation does not apply to suspension orders issued by War Price and Rationing Boards, but Sec. 1300.169 of this regulation prescribes the procedure used on appeal from such orders."

It defines the term "suspension order" in its Section 1300.180 (f) as follows:

"'Suspension Order' means an order which regulates or prohibits, for a period, the sale, transfer, delivery or other disposition or the acquisition or use of commodities or facilities, and which is issued against a person who has acted in violation of a rationing order or regulation."

By the provisions of said regulations a procedure is set up for the preferring of charges against alleged violators of rationing regulations or orders, the hearing of such charges, the determination by a "hearing commissioner" of [fol. 5] the charges, the issuing of suspension orders by such hearing commissioner, appeal from such order, and procedure on appeal.

4. Purporting to act pursuant to the authority of said Procedural Regulation 4, and acting for and on behalf of Walter Cellhorn, Regional Attorney, Region 2, Office of Price Administration, one Carl W. Bernueff, in his capacity as Chief Enforcement Attorney, District of Columbia Office of Price Administration, acting on behalf of and under direction of John L. Laskey, District Enforcement Attorney, District of Columbia Office of Price Administration, issued a notice on August 9, 1943, to the plaintiff, in the form

specified by Section 1300.153 of said Procedural Regulation 4, wherein the plaintiff was notified that it was charged with having violated the provisions of Ration Order No. 11, Fuel Oil Rationing Regulations (Form OPA-R-1115 (Rev.)), was further notified of the time and place of hearing, and was further notified that the purpose of the hearing would be to provide the hearing commissioner with information from which to determine whether a suspension order should be issued prohibiting the plaintiff from receiving any deliveries or transfers of or using fuel oil or any other products, commodities, or facilities then or thereafter rationed by the Office of Price Administration or prohibiting the plaintiff from selling, transferring, delivering, or otherwise dealing in fuel oil or any other products, commodities, or facilities which might then or thereafter be rationed by the Office of Price Administration, or both, for such period of time as might be deemed appropriate in the public interest, and to conserve the supply of such products, commodities, or facilities for military and essential civilian uses. A copy of said notice and specification of charges is attached hereto, marked Exhibit 2, and prayed to be read and considered as a part hereof. Copy of Ration Order No. 11, referred to in the notice of hearing and specifications, is attached hereto, marked Exhibit 3.

[fol. 6] 5. Thereafter on, to wit, August 31, 1943, September 1, 1943, September 18, 1943, September 20, 1943, and October 22, 1943, hearings were held pursuant to said notice, and, thereafter, on, to wit, November 8, 1943, Clifford R. Snider, then Acting Hearing Commissioner, Office of Price Administration, Region 2, issued a purported suspension order and opinion, copy of which is attached hereto, marked Exhibit 4, and prayed to be read and considered as a part hereof. By said suspension order and opinion the said Clifford R. Snider, as Acting Hearing Commissioner, purported to find the plaintiff guilty of certain of the charges set forth in the specifications attached to the notice of hearing, and not guilty of others. Among the terms of the said suspension order was a provision prohibiting the plaintiff from transferring any fuel oil directly or indirectly to any consumer to whom it made no transfer of oil from July 1, 1942, to July 1, 1943.

6. Thereafter the plaintiff appealed to the Hearing Administrator, Office of Price Administration, from the said

suspension order, copy of plaintiff's notice of appeal being attached hereto, marked Exhibit 5, and prayed to be read and considered as a part hereof. The defendant John L. Laskey, in his official capacity as aforesaid, also appealed from the said order of the Hearing Commissioner, copy of his notice of appeal being attached hereto, marked Exhibit 6, and prayed to be read and considered as a part hereof. Thereafter a hearing was had by Talbot Smith, then Hearing Administrator of the Office of Price Administration, now resigned, and thereafter on, to wit, December 31, 1943, the said Talbot Smith issued a so-called "Decision on Appeal," copy of which is attached hereto, marked Exhibit 7, and prayed to be read and considered as a part hereof. At the conclusion of said Decision on Appeal the said Talbot Smith ordered that the suspension order of the Hearing Commissioner (Exhibit 4) be modified to read as follows:

[fol. 7] "A. From January 15, 1944 to December 31, 1944, both dates inclusive, respondent shall not, directly or indirectly, receive delivery of fuel oil for resale or transfer to any consumer, nor shall respondent transfer fuel oil to any consumer, provided that (1) if respondent on or before January 10, 1944 delivers to the District Enforcement Attorney of the District of Columbia District Office a duly verified list of the names and addresses of all consumers to whom respondent sold and delivered fuel oil from October 21, 1941 through October 21, 1942, and (2) if respondent surrenders to the District of Columbia District Office before January 15, 1944 all void or expired ration evidences (or delivery receipts) then in its possession, then and in that event respondent may from January 15, 1944 to December 31, 1944, both dates inclusive, transfer fuel oil to any consumer to whom it transferred fuel oil between October 21, 1941 through October 21, 1942, both dates inclusive, and may receive deliveries of sufficient quantities of fuel oil for purposes of resale and transfer to such consumers.

"B. Within thirty (30) days after the receipt of a copy of this order, respondent shall render an accounting to the Director of the District of Columbia District Office (1) for all fuel oil transferred or received by the respondent during the period from 12:01 a. m.,

October 22, 1942, to the date of such accounting, (2) for all coupons, ration evidences (or delivery receipts) received by or surrendered by the respondent during said period, and (3) showing the quantity of fuel oil (by physical inventory), and coupons, ration evidences (or delivery receipts), on hand and on deposit in its ration bank account as of the date of said accounting.

"C. If at any time during the period of this suspension the Petroleum Administrator for War or his duly authorized agent certifies to the Director of the District of Columbia District Office that the fuel oil needs of the District of Columbia or the area served by respondent cannot be met by the supplies and facilities of other suppliers and dealers in this area in addition to those of respondent's as herein restricted, and that it is, therefore, essential to the welfare of the community that the provisions of this order should be modified, and the District Director joins with respondent in a petition requesting such modification, an order of modification may be entered either by the Chief Hearing Commissioner of Region II or the Hearing Commissioner who heard the case below removing the restrictions herein imposed to the extent such action is shown to be necessary to the welfare of the community or the war effort.

"D. Any terms used in this suspension order that are defined in Ration Order No. 11, shall have the meaning therein given to them."

7. All of the said proceedings referred to in Paragraphs 4 to 7, inclusive, hereof, and orders issued pursuant thereto, were and are void and of no legal force or effect. The making of charges of the nature set forth in Exhibit 2 hereto, the hearing of the same or the entry of any so- [fol. 8] called "suspension order" is not authorized by any statute or valid executive order, proclamation, or regulation. The said charges (Exhibit 2) were filed and the proceedings herebefore set forth were held for the purpose of determining the penalty, or the amount of punishment to be imposed upon the plaintiff by reason of alleged violations of regulations and the order contained in the Decision on Appeal (Exhibit 7) is the assessment of a penalty or punishment for alleged infractions or violations

of regulations. None of the defendants have authority under any statute or valid executive order or Governmental regulation to prohibit the plaintiff from receiving delivery of fuel oil for resale or transfer, provided that in so receiving such oil the plaintiff complies with regulations of general force and effect, and none of the defendants have authority under any statute or valid executive order or Governmental regulation to prevent the plaintiff from selling, transferring, or delivering fuel oil to any person, firm, or corporation, provided such sale, transfer, or delivery is made in compliance with laws, regulations, or orders of general effect. None of the defendants, or any officer of the Office of Price Administration, has authority under any statute or valid executive order or Governmental regulation to assess a penalty or punishment for past violations of regulations of the Office of Price Administration. The plaintiff is advised and therefore avers that Section 301 of the Act approved March 27, 1942, Public Law 507—77th Congress, commonly known as the "Second War Powers Act, 1942," provides the exclusive remedies for the enforcement of the plaintiff's liabilities or duties created by said statute or any rule, regulation, or order thereunder whether theretofore or thereafter issued; that if the said order of the Hearing Administrator of December 31, 1943 (Exhibit 7) is enforced the plaintiff will have been penalized and [fol. 9] punished for alleged violations of regulations of the Office of Price Administration issued pursuant to the Second War Powers Act, 1942, without proceedings having been brought in the District Courts of the United States as provided by said Second War Powers Act, 1942, and without having been found guilty of violations by any such court. The said order is in further violation of War Production Board Directive No. 1, under the purported authority of which Directive No. 1 the said order was purported to have been issued, in that the said Directive No. 1 expressly prohibits the Office of Price Administration to control the acquisition of products by or for the account of the Army or Navy of the United States, the United States Maritime Commission, the Panama Canal, the Coast and Geodetic Survey, the Coast Guard, the Civil Aeronautics Authority, the National Advisory Commission for Aeronautics, or the Office of Scientific Research and Development, or to Government agencies or other persons acquiring products for export to and consumption or use in any

foreign country, whereas the said order of December 31, 1943, if enforced, would prohibit the plaintiff from directly or indirectly receiving delivery of fuel oil for resale to the above mentioned Government commissions, authorities, and agencies and would prohibit the sale or delivery by the plaintiff to any of the said commissions, offices, and agencies. The said order is in further violation of the Fuel Oil Rationing Regulations (Ration Order No. 11) of the Office of Price Administration in that Section 1394.5661 of said Ration Order No. 11 provides that from and after November 1, 1942, no dealer or supplier shall discriminate in the transfer of fuel oil, among consumers entitled to acquire fuel oil under said Ration Order No. 11, whereas said Order of December 31, 1943, requires the discrimination by the plaintiff against consumers who were not the plaintiff's customers in the year October 21, 1941, to October 21, 1942, and in favor of those consumers who were the plaintiff's customers during that year.

[fol. 10] 8. The plaintiff, at the time of the first hearing of said charges before the Hearing Commissioner, duly made his contention that the proceedings and any suspension order that might issue as a result thereof were void for lack of authority to institute or hear the aforesaid charges (Exhibit 2), and at all times during said hearing, and during the proceedings on appeal from the suspension order and opinion of the Hearing Commissioner urged the contention that there was no authority for such proceedings or order but the said contention was overruled or disregarded, the Hearing Commissioner in his suspension order and opinion (Exhibit 4, Page 2) stating as follows:

"At the outset of the hearing respondent raised the question as to the validity of suspension proceedings and of the power of the Acting Hearing Commissioner, not only to conduct the hearing, but to issue a suspension order. This question is one of constitutional law which the Acting Hearing Commissioner has no jurisdiction or authority to determine. The respondent was advised that the hearing was being held under Procedural Regulation No. 4 prescribed by the Office of Price Administration which safeguards the rights of respondent and accords respondent due process of law. Further comment upon the objection raised by the respondent would serve no useful purpose."

Although the plaintiff urged among other grounds for appeal that (Exhibit 5):

"(1) The Acting Hearing Commissioner erred in undertaking the hearing of Suspension Proceedings, because neither he nor any official in the Office of Price Administration has any power in law to order a suspension or partial suspension of Respondent's right to do business or to impose any other penalty,"

and

"(c) The Acting Hearing Commissioner erred in making each and all of his Findings of Fact in that a finding by him or by any other official of the Office of Price Administration is of no force or effect in the determination as to whether or not a suspension, partial suspension, or other penalty may be imposed, inasmuch as the only effective finding of fact or conclusion of law must be by a judicial tribunal,"

and

"(4) The Acting Hearing Commissioner erred in making each and all of his Conclusions of Law in that a conclusion by him or by any other official of the Office of Price Administration is of no force or effect in the determination as to whether or not a suspension, partial [fol. 11] suspension, or other penalty may be imposed, inasmuch as the only effective Finding of Fact or Conclusion of Law must be by a judicial tribunal,"

and

"(1) That the proceedings herein are void and that no officer or official of the Office of Price Administration has legal authority or power to assess any penalty or suspension against Respondent;

"(2) That Respondent's constitutional rights are violated by the order or other penalty imposed by the Office of Price Administration,"

the defendant, John L. Laskey, in his official capacity as aforesaid, urged before the Hearing Administrator that the Hearing Administrator could not consider the issue as to the power of the Office of Price Administration or of the Hearing Commissioner to issue a suspension order. The Hearing Administrator at the hearing on appeal refused to

allow the question as to his authority to be argued, and the said Decision on Appeal (Exhibit 7, Page 1, Paragraph 3) expressly states:

"The jurisdictional issue raised by respondent (meaning plaintiff) are not matters upon which either the Hearing Commissioner or the Hearing Administrator is empowered to pass. * * * It is a well-established rule of law that an administrative tribunal may not pass upon the validity of the statutes or orders that create it. This principle, of course, does not preclude respondent from raising such an issue in a proper forum."

9. If the said order of December 31, 1943, issued by the Hearing Administrator of the Office of Price Administration (Exhibit 7) or any substantial part thereof is enforced, the plaintiff will suffer irreparable damage. The plaintiff's business is strictly seasonal and of such a type that a large proportion of the plaintiff's customers change from year to year; that is to say there is a large percentage of turnover from year to year in the plaintiff's customers (approximately 15% to 20%); that due to the shifting of population to and from the District of Columbia and vicinity, which shifting population has been intensified by war conditions, by reason of deaths, going out of business, changes in ownership of businesses, entering into business of users and potential users of fuel oil, the destruction and construction of buildings requiring heat, the changing or conversion of heating systems and other factors having no relation to orders of the Office of Price Administration, such turnover in customers will continue to take place and if the plaintiff is unable to replace the business of prior customers by acquiring new customers, the plaintiff will be forced either to discontinue its business or to continue at a great loss. The plaintiff's books and records do not show the names and addresses of all consumers to whom the plaintiff sold and delivered fuel oil from October 21, 1941, through October 21, 1942, because, where sales or deliveries were made for cash, no account with the customer would be shown on the books of the plaintiff. A large percentage of the plaintiff's sales have been and are for cash. The plaintiff's records as to other customers for the year October 21, 1941, to October 21, 1942, are incomplete, and it is impossible for the plaintiff to comply with the condition set forth in the

said order of December 31, 1943, that the plaintiff furnish a duly verified list of the names and addresses of all consumers to whom the plaintiff sold and delivered fuel oil from October 21, 1941, through October 21, 1942. The plaintiff as aforesaid (Paragraph 2) increased its facilities for the storage and handling of fuel oil pursuant to recommendations by the Petroleum Administrator for War at a total expense of approximately \$50,000.00 which will be wasted and of no use or benefit to the plaintiff or to the war effort if said order of December 31, 1943, is enforced, and a total loss when the emergency shall have ceased. The plaintiff is and will be unable to insure or assure that no violations of the said order will be committed because the plaintiff can act only through agents, servants, and employees and there is no method known to the plaintiff by which the plaintiff can prevent its order clerks, telephone [fol. 13] operators, and deliver-men from unwittingly serving customers who were not customers during the calendar year October 21, 1941, through October 21, 1942. Since, to wit, December 29, 1943, and as late as January 3, 1944, subsequent to the rendering of the order of the Hearing Administrator (Exhibit 7), the Division of Procurement of the United States Treasury Department, which acts as the purchasing agent or office of the various branches, departments, and agencies of the Government of the United States and of the District of Columbia, including the United States Navy, the United States Maritime Commission, the Panama Canal, the Coast and Geodetic Survey, the Coast Guard, and the Civil Aeronautics Authority, has purchased from the plaintiff in excess of 250,000 gallons of fuel oil, some of which was for the account or use of the United States Navy Torpedo Plant in Alexandria, Virginia, the United States Naval Medical Center at Bethesda, Maryland, and other agencies, departments, and commissions unknown to the plaintiff. By reason of the shortage of fuel oil available to competing distributors of fuel oil in the District of Columbia and vicinity, including the present contractor supplying the said Procurement Division of the Treasury Department, the said Procurement Division of the Treasury Department will continue to endeavor to purchase from the plaintiff fuel oil for the needs of the various departments, branches, agencies, offices, and commissions of the Government of the United States and of the District of Columbia. If the said order of December 31, 1943 (Exhibit 7) is en-

forced, the plaintiff will be unable to sell, transfer, or deliver fuel oil to the said Procurement Division or any of the departments, offices, commissions, or agencies of the United States Government or the District of Columbia. Among the institutions served by the plaintiff are hospitals, hotels, and apartment houses, none of which were customers of the [fol. 14] plaintiff in the year October 21, 1941, to October 21, 1942. Among the agencies for which the Procurement Division of the Treasury Department purchased fuel oil as aforesaid were Gallinger Hospital, Freedman's Hospital, and Howard University. Among other customers or institutions now being served by the plaintiff which were not customers or served by the plaintiff during the year October 21, 1941, to October 21, 1942, are housing developments financed by the Government, housing thousands of defense workers, and private homes housing defense workers, in addition to hundreds of other residences and business establishments, too numerous to mention.

10. By reason of the premises the plaintiff is without adequate remedy at law and the plaintiff and the public will suffer irreparable damage unless this court enjoins and prohibits the enforcement of the said order of December 31, 1943 (Exhibit 7). The said order of December 31, 1943, by its terms becomes effective prior to the time within which the defendants are required by the rules of this court to answer and prior to the time within which a memorandum in opposition to a motion for a preliminary injunction is required to be filed and a hearing had on a motion for a preliminary injunction. The plaintiff will suffer immediate and irreparable injury, loss, and damage unless a temporary restraining order is issued restraining and enjoining the enforcement of the said order of December 31, 1943, or any part thereof before the said order by its terms becomes effective.

Wherefore, the premises considered, plaintiff respectfully prays:

1. That this honorable court issue a temporary restraining order enjoining and restraining the defendants and each of them from enforcing or attempting to enforce the said order of December 31, 1943 (Exhibit 7) of the Hearing Administrator of the Office of Price Administration, or any part thereof.

[fol. 15] 2. That this Court issue a preliminary injunction enjoining and restraining the defendants and each of them from enforcing or attempting to enforce the said order of December 31, 1943 (Exhibit 7) of the Hearing Administrator of the Office of Price Administration, or any part thereof.

3. That this Honorable Court issue an injunction permanently enjoining and restraining the defendants and each of them from enforcing or attempting to enforce the said order of December 31, 1943 (Exhibit 7) of the Hearing Administrator of the Office of Price Administration, or any part thereof.

4. And for such other and further relief as to the court may seem just and proper.

L. P. Steuart & Bro., Inc. By Curtis S. Steuart, Secretary. (S.) Renah F. Camalier, 1366 National Press Building, Washington, D. C., Attorney for Plaintiff.

Duly sworn to by Curtis S. Stewart. Jurat omitted in printing.

[fol. 16] EXHIBIT "1" TO COMPLAINT

Procedural Reg. 4. Feb. 6, 1943

Office of Price Administration

Part 1300—Procedure

[Procedural Regulation 4]

Issuance of Rationing Suspension Orders

The Title and §§ 1300.151 to 1300.160 inclusive are amended as set forth herein.

Pursuant to the authority conferred upon the Administrator by Executive Order 9125, Executive Order 9280, War Production Board Directive No. 1 as supplemented, and Food Directive 1 of the Secretary of Agriculture the following rules are prescribed for the issuance of suspension orders:

Authority: §§ 1300.151 to 1300.181, inclusive, issued under Pub. Law 671, 76th Cong., as amended by Pub. Laws 89,

421 and 507, 77th Cong.; E. O. 9125, 7 F. R. 2719, issued April 7, 1942, WPB Dir. No. 1, 7 F. R. 562, as supplemented, E. O. 9280, 7 F. R. 10179, issued December 5, 1942, Food Directive 1 of the Secretary of Agriculture, 8 F. R. 827.

Purpose and Application of Procedural Regulation No. 4

§ 1300.151 *Purpose and application.* It is the purpose of this regulation to prescribe the procedure used by the Office of Price Administration in the issuance of rationing suspension orders. The regulation does not apply to suspension orders issued by War Price and Rationing Boards, but § 1300.169 of this regulation prescribes the procedure used on appeal from such orders.

Suspension order Proceedings

§ 1300.152 *Institution of proceedings.* Proceedings for the issuance of suspension orders shall be instituted by the service of a notice of hearing upon the respondent not less than three (3) days prior to such hearing.

§ 1300.153 *Notice of hearing.* A notice of any hearing to be held pursuant to this procedural regulation shall be issued by the Regional Attorney and shall set forth the time and place of hearing, a statement of the charges against the respondent, and a statement of the purpose for which the hearing is to be held.

(b) If the notice of hearing is served at least five (5) days before the date set for the hearing, the notice may provide that such hearing will be held only if respondent files with the Hearing Commissioner a request for such hearing and a statement of the general nature of his defense to each of the charges. Such notice shall fix the time for filing the request and statement, which shall be not less than three days after service of the notice.

(c) No hearing need be held if the respondent has failed to file the required request and statement within the time prescribed by a notice issued in accordance with paragraph (b) of this section.

§ 1300.154 *Hearing Commissioner; Presiding Officer; appointment and duties.* Any hearing held pursuant to this regulation shall be conducted by a Hearing Commissioner or such person as he may designate to conduct such hear-

ing (hereinafter called "presiding officer"). The Hearing Commissioner or a presiding officer shall preside at the hearing, administer oaths and affirmations, and rule on the admission and exclusion of evidence.

§ 1300.155 *Continuance or adjournment of hearing.* The hearing shall be held at the time and place specified by the notice of hearing, but the Hearing Commissioner or presiding officer may continue or adjoin the hearing to a later date or to a different place. Notice of such adjournment or continuance may be made by announcement at the hearing.

§ 1300.156 *Conduct of hearing.* (a) The hearing shall be conducted by the Hearing Commissioner or presiding officer in such manner as will permit the presentation of evidence and argument to the fullest extent compatible with fair and expeditious determination of the issues raised in the hearing. To this end:

(1) The respondent shall have the right to be represented by counsel of his own choosing.

(2) The rules of evidence prevailing in the courts of law or equity shall not be controlling.

(3) The Hearing Commissioner or presiding officer shall afford reasonable opportunity for cross-examination of witnesses.

(b) All hearings held pursuant to this procedural regulation shall be public.

§ 1300.157 *Subpoenas.* (a) Applications for subpoenas shall be filed with the Hearing Commissioner, who may thereafter grant or deny the application or refer it to the presiding officer. The subpoena shall be issued if such application is approved by the presiding officer.

(b) The application for subpoena shall specify the name and address of the witness and the nature of the facts to be proved by him and, if calling for the production of documents, shall specify them with such particularity as will enable them to be identified for purposes of production.

(c) Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fees and mileage specified in

section 2 (a) (4) of the Act. When the subpoena is issued at the instance of the Regional Attorney, fees and mileage need not be tendered.

§ 1300.158 *Witnesses.* Witnesses summoned before a Hearing Commissioner or presiding officer at any hearing held pursuant to this regulation shall be paid the fees and mileage specified by section 2 (a) (4) of the Act. Witness fees and mileage shall be paid by the party at whose instance the witness appears.

§ 1300.159 *Contemptuous conduct.* Contemptuous conduct at any hearing shall be ground for exclusion from the hearing. The refusal of a witness to answer any question which has been ruled to be proper shall, in the discretion of the Hearing Commissioner, or presiding officer, be ground for the striking out of all testimony previously given by such witness, on related matters.

§ 1300.160 *Transcript of hearing.* A stenographic report of all hearings shall be taken. The report need not be transcribed if such transcription is waived by the parties to the proceeding. If the report is transcribed, a copy shall be available for inspection during business hours at the Office of the Hearing Commissioner. Argument of counsel shall not be included in the report except at the direction of the Hearing Commissioner or presiding officer.

§ 1300.161 *Presiding officer's advisory report; service.* (a) A presiding officer who has conducted a hearing shall prepare an advisory report. Such report shall contain (1) findings of fact, (2) conclusions of law, and (3) recommendations with respect to the disposition of the matter.

(b) The advisory report shall be filed with the Hearing Commissioner, and copies thereof shall be served on the respondent and the Regional Attorney.

§ 1300.162 *Briefs on presiding officer's advisory report* (a) Any party may submit to the Hearing Commissioner a brief or written argument in opposition to or in support of the report of the presiding officer.

[fol. 17] (b) Such briefs shall be filed within five (5) days after the service of the presiding officer's report. Two (2) copies of the brief shall be filed with the Hearing Com-

missioner and a copy thereof served upon the opposing party at or before the time of filing.

(c) Briefs may be filed after the time prescribed by paragraph (b) of this section only with the permission of the Hearing Commissioner.

§ 1300.163 *Briefs after hearing, before Commissioner.* The Hearing Commissioner may, upon the request of any party to a proceeding conducted by him, permit the filing of briefs or written argument. Such briefs or written argument shall be filed within such time as the Hearing Commissioner may prescribe.

§ 1300.164 *Waiver of hearing.* (a) If a respondent fails to appear at a hearing or fails to request a hearing when such request is required pursuant to § 1300.153 (b), he shall be deemed to have waived a hearing, and the charges set forth in the notice of hearing shall be deemed to be admitted for the purposes of the hearing. In such cases the Regional Attorney may present evidence relevant to the determination of the effective period of any suspension order which might be issued against the respondent.

(b) At any time prior to the tenth day after the service of a suspension order issued after a default, the respondent may file with the Hearing Commissioner who issued the order, a petition for the reopening of the proceedings, setting forth the grounds on which he believes his default should be excused. A copy of such petition shall be served upon the Regional Attorney at or prior to the time it is filed with the Hearing Commissioner. If the Hearing Commissioner grants the petition he shall notify the Regional Attorney and the respondent of the time and place set for the hearing and may set aside or stay the suspension order.

§ 1300.165 *Order of the Hearing Commissioner.* (a) If the Hearing Commissioner determines that a respondent has violated a rationing regulation or order he may issue a suspension order.

(b) Any suspension order hereunder shall set forth the findings of fact and conclusions of law upon which it is based, and shall contain a statement of the reasons why a suspension order should be issued unless such statement is set forth in an opinion accompanying the order.

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ton in the amount of 162 gallons, in violation of Section 1394.5666 (a) of Ration Order No. 11.

217. On or about the 21st day of April, 1943, respondent made an emergency delivery of fuel oil to Claude S. Stanton, 5400 Galena Place, N. W., Washington, D. C., in the amount of 61 gallons. Said delivery was in violation of Section 1394.5666 (a) of Ration Order No. 11 in that the amount delivered was in excess of 50 gallons of fuel oil.

218. On or about the 21st day of April, 1943, respondent, in violation of Section 1394.5666 (a) of Ration Order No. 11, knowingly made more than one emergency delivery of fuel oil to Claude S. Stanton, 5400 Galena Place, N. W., Washington, D. C.

219. Respondent, in violation of Section 1394.5666 (a) of Ration Order No. 11, knowingly made two emergency deliveries of fuel oil to Edward Burke, 2415 Otis St., N. E., Washington, D. C., during the heating year of 1942-1943, and more specifically on March 19, 1943, and April 20, 1943.

220. Respondent, in violation of Section 1394.5666 (a) of Ration Order No. 11, knowingly made two emergency deliveries of fuel oil to Mrs. Thomas J. Brown, 1345 Franklin Street, N. E., Washington, D. C., during the heating year 1942-1943, and more specifically on March 6, 1943, and April 3, 1943.

221. Respondent, in violation of Section 1394.5666 (a) of Ration Order No. 11, knowingly made two emergency deliveries of fuel oil to Francis C. Boyd, 701 Fourth Street, S. E., Washington, D. C., during the heating year of 1942-1943, and more specifically on March 27, 1943, and April 15, 1943.

222. Respondent, in violation of Section 1394.5666 (a) of Ration Order No. 11, knowingly made two emergency deliveries of fuel oil to Pauline T. Drake, 5215 Cloud Place, N. E., Washington, D. C., during the heating year of 1942-1943, and more specifically on February 25, 1943, and on March 9, 1943.

[fol. 29] 223. Respondent, in violation of Section 1394.5666 (a) of Ration Order No. 11, knowingly made two emergency deliveries of fuel to Mattie Wood, 23 M Street, N. W., Washington, D. C., during the heating year of 1942-

1943, and more specifically, on March 28, 1943, and April 21, 1943.

224. Respondent failed, neglected, and refused to deliver to the proper ration board Emergency Receipts received by it as required by Section 1394.5666 (b) of Ration Order No. 11.

C

General Violations

225. Respondent failed, neglected and refused, at all times between the 1st day of October, 1942, and the 2nd day of June, 1943, to keep a record showing each transfer of fuel oil in excess of 10 gallons, the name and address of the transferee, the date of the transfer, the amount of fuel oil transferred, the place where delivered and the number and value of coupons detached or the amount of any ration check received, for such transfer, in violation of Section 1394.5666 of Ration Order No. 11.

226. At all times during the period between the 1st day of October, 1942, and the 2nd day of June, 1943, and in all instances in which respondent delivered fuel oil, respondent failed, neglected, and refused to execute and to have executed, proper delivery receipts as required by Section 1394.5655 of Ration Order No. 11.

227. At all times during the period between the 1st day of October, 1942, and the 2nd day of June, 1943, and in all instances of transfers to a consumer who had deposited his coupon sheet with respondent as a dealer, respondent failed, neglected, and refused to detach coupons for fuel oil deliveries as required by Section 1394.5653 of Ration Order No. 11.

(c) If the Hearing Commissioner determines that no suspension order should be issued he shall issue an order dismissing the proceeding in which he shall set forth his findings of fact and conclusions of law. The order shall contain a statement of the reasons why a suspension order should not be issued unless such reasons are stated in an opinion accompanying the order.

§ 1300.166 *Consent order.* If the Hearing Commissioner approves an agreement entered into by the Regional Attorney and a respondent with respect to the terms of a suspension order, he shall issue the order agreed upon, and such order shall have the same force and effect as an order issued under § 1300.165.

§ 1300.167 *Hearing and order by Hearing Administrator.*
(a) At any time after the service of a notice of hearing and before the service of the suspension order, the Hearing Administrator may direct that the proceedings be brought before him.

(b) Notice that the proceedings are to be brought before the Hearing Administrator shall be served upon the Regional Attorney, the respondent and the Hearing Commissioner.

(c) Proceedings brought before the Hearing Administrator shall be conducted in the same manner as if brought before a Hearing Commissioner.

§ 1300.168 *Incidental provisions in suspension orders:* A suspension order issued under this regulation may contain such provisions as may be deemed appropriate to make effective the regulation or prohibition prescribed in the order.

Suspension Orders on Appeal From Orders of War Price and Rationing Boards

§ 1300.169 *Appeals from orders of Boards* (a) Whenever a right to appeal to a Hearing Commissioner from an order of a War Price and Rationing Board is granted by a rationing order or regulation, such appeal may be taken within the time and in the manner prescribed in such rationing order or regulation.

(b) The appeal shall be heard by the Hearing Commissioner or a presiding officer, and determined by the Hearing Commissioner in the same manner as if it were a proceeding instituted by a notice of hearing issued under § 1300.152.

(c) The Hearing Commissioner may, for good cause shown upon application by the respondent, stay or suspend the operation of an order issued by a War Price and Rationing Board pending the hearing and determination of the appeal.

(d) Any order issued by the Hearing Commissioner upon the determination of the appeal shall supersede the order of the Board from which the appeal was taken.

Appeals to and Review by Hearing Administrator

§ 1300.170 *Appeals from orders of the Hearing Commissioner.* (a) The respondent or the Regional Attorney may appeal to the Hearing Administrator from any order of the Hearing Commissioner issued under this regulation within ten (10) days (or in the case of orders issued in the Territories and Possessions, within thirty (30) days) after service of such order.

§ 1300.171 *Notice of appeal.* (a) The appeal may be taken by serving a notice of appeal on the Hearing Commissioner and the other party to the proceeding and filing a copy of the notice of appeal with proof of such service at the Office of the Hearing Administrator.

(b) The notice of appeal shall contain (1) a reference to the findings of fact and conclusions of law, if any, to which exception is taken, (2) a brief statement of the grounds for such exceptions, (3) the modifications proposed with respect to the order appealed from, and (4) a brief statement of the reasons supporting such modifications.

§ 1300.172 *Stay pending appeal.* The Hearing Administrator may, for good cause shown upon application by the respondent, stay or suspend the operation of an order of a Hearing Commissioner pending the determination of the appeal.

§ 1300.173 *Record on appeal.* The Hearing Commissioner shall, within three (3) days after the receipt of the notice

of appeal, send to the Hearing Administrator the complete record in the case which shall include:

- (a) The Notice of Hearing and proof of service thereof;
- (b) The transcript of testimony and all exhibits;
- (c) The order of the Hearing Commissioner; and
- (d) In a case instituted before a Board, the order of the Board.

§ 1300.174 *Briefs.* (a) Any party may submit to the Hearing Administrator a brief in support of or in opposition to the order of the Hearing Commissioner.

(b) All briefs shall be submitted within twenty (20) days (or in the case of orders issued in the Territories or Possessions within forty (40) days) after service of the order appealed from. Two (2) copies of the brief shall be filed with the Hearing Administrator and a copy thereof served upon the opposing party at or before the time of filing.

(c) Briefs may be filed after the time prescribed by paragraph (b) of this section only with the permission of the Hearing Administrator.

§ 1300.175 *Order on appeal.* (a) The Hearing Administrator may affirm, reverse or modify the order of a Hearing Commissioner or direct that a further hearing be held thereon.

(b) The Hearing Administrator shall issue his order on appeal within a reasonable time after the filing of the notice of appeal. The order may be accompanied by an opinion of the Hearing Administrator, setting forth the reasons for the action taken.

(c) Copies of the order on appeal shall be served on the respondent and the Regional Attorney.

§ 1300.176 *Review on initiative of Hearing Administrator.* (a) If neither the Regional Attorney nor the respondent appeals from the order within the time prescribed in § 1300.170, the Hearing Administrator may review the case on his own motion.

(b) The Hearing Administrator shall initiate a review under subsection (a) of this section by serving a notice of

intention to review on the Regional Attorney and respondent.

(c) A review proceeding under this section shall be conducted in the same manner as an appeal under § 1300.170 except that briefs shall be filed within 15 days (or in the [fol. 18] case of orders issued in the Territories and Possessions, within thirty-five (35) days) after the service of notice of intention to review.

§ 1300.177 *Petition for reconsideration or order of Hearing Administrator under § 1300.167.* (a) Any party may file with the Hearing Administrator a petition for reconsideration of an order issued by the Hearing Administrator under § 1300.167.

(b) The petition for reconsideration shall be served and filed in the same manner as a Notice of Appeal under § 1300.171, and such petition shall conform to the requirements for notices of appeal prescribed in § 1300.171 (b). Proceedings on such petition shall be the same as on an appeal under § 1300.170.

Miscellaneous

§ 1300.178 *Service of papers.* Notices, orders and other process and papers may be served personally or by leaving a copy thereof at the residence or the principal office or place of business of the person to be served; or by registered mail or by telegraph. When service is made personally or by leaving a copy at the residence or the principal office or place of business, the verified return of the person serving or leaving the copy shall be proof of service. When service is by registered mail or telegraph the return post office receipt or telegraph receipt shall be proof of service.

§ 1300.179 *Office hours of Office of Hearing Commissioners and Hearing Administrators.* The Offices of the Hearing Administrator and the Hearing Commissioners shall be open, on weekdays, from 9 a. m. until 5 p. m. and on Saturdays from 9 a. m. until 1 p. m. Any person desiring to file papers, at any time other than the regular hours stated, may file a written application with the appropriate Hearing Commissioner, or the Hearing Administrator if such papers are to be filed with him, requesting permission therefor.

§ 1300.180 *Definitions.* As used in this procedural regulation, unless the context otherwise requires, the term:

(a) "Act" means the Act of June 28, 1940 (54 Stat. 676) as amended by the Act of May 31, 1941 (55 Stat. 236), and by Title III of the Second War Powers Act (56 Stat. 176), 50 USCA (App.) section 633.

(b) "Hearing Administrator" means the Hearing Administrator of the Office of Price Administration.

(c) "Hearing Commissioner" means the Chief Hearing Commissioner of the Office of Price Administration for the Region in which the proceeding is instituted or such Hearing Commissioner as may be authorized to determine a proceeding held pursuant to this procedural regulation.

(d) "Rationing order or regulation" means any order or regulation of the Office of Price Administration issued pursuant to War Production Board Directive No. 1 as supplemented or Food Directive 1 of the Secretary of Agriculture or pursuant to any other delegation of authority conferred by section 2 (a) of the Act.

(e) "Regional Attorney" means the Regional Attorney for the region in which the violation involved in the proceeding occurred, or an attorney authorized to act for the Regional Attorney in any proceeding conducted pursuant to this regulation.

(f) "Suspension order" means an order which regulates or prohibits, for a period, the sale, transfer, delivery or other disposition or the acquisition or use of commodities or facilities, and which is issued against a person who has acted in violation of a rationing order or regulation.

§ 1300.181 *Effective date.* Procedural Regulation No. 4 (§§ 1300.151 to 1300.181 inclusive) shall become effective on 12:01 a. m. on February 15, 1943. It governs all proceedings in cases instituted on and after that date. Unless the Hearing Administrator otherwise directs, it shall also govern all further proceedings in cases then pending; *Provided, however,* That the procedure which was formerly applicable shall govern review of orders issued prior to February 15, 1943, and the provisions establishing such procedure are continued in effect for this purpose.

Issued this 6th day of February 1943.

Prentiss M. Brown, Administrator.

[fol. 19]

EXHIBIT "2" TO COMPLAINT

UNITED STATES OF AMERICA, OFFICE OF PRICE ADMINISTRATION

Docket No. 2210:20607

Matter of L. P. STEUART & BRO., INC., a Corporation

Proceedings to determine whether a suspension order
should be issued

NOTICE OF HEARING

To: L. P. Steuart & Bro., Inc., 138 Twelfth Street, N. E.,
Washington, D. C.

You Are Hereby Given Notice that you are charged with having violated the provisions of Ration Order No. 11, Fuel Oil Rationing Regulations.

The specific violations of said Ration Order No. 11 with which you are charged are set forth in the attached Exhibit I, Specification of Charges, the contents of which are hereby referred to and by such reference made a part hereof.

You are further notified that a hearing in this matter will be held at 10 o'clock in the forenoon on the 19th day of August, A. D. 1943, before a Hearing Commissioner of the Office of Price Administration. Said hearing will be held at Municipal Court Building—Criminal Division, Fifth Street, between E and F Streets, N. W., Washington, D. C. The hearing will be conducted in accordance with the provisions of Procedural Regulation No. 4, a copy of which is attached to this notice, and served herewith.

The purpose of the hearing will be to provide the Hearing Commissioner with information from which to determine whether a suspension order shall be issued prohibiting you from receiving any deliveries or transfers of or using Fuel Oil or any other products, commodities or facilities which may now or hereafter be rationed by the Office of Price Administration or prohibiting you from selling, transferring, delivering or otherwise dealing in Fuel Oil or any other products, commodities or facilities which may now or hereafter be rationed by the Office of Price Administration, or both, for such period of time as may be deemed appropriate in the public interest, and to conserve the supply of such products, commodities or facilities for military and essential civilian uses.

You may appear at the hearing and offer evidence in your behalf personally or by counsel of your own choosing. In [fol. 20] the event that you fail to appear at the hearing the charges will be deemed admitted for the purposes of the hearing and the hearing commissioner may take such action as may be warranted in the matter.

Walter Gelihorn, Regional Attorney, Region II, Office of Price Administration. By (S.) Carl W. Beru-effy, Chief Enforcement Attorney, District of Columbia District Office, 5601 Connecticut Avenue, N. W., Washington, D. C.

Notice. Respondents are entitled to process to compel the attendance of witnesses at the hearing. Subpoenas are issued in accordance with the provisions of Procedural Regulation No. 4. All applications for subpoenas must be filed in writing with Harry B. Chambers, Chief Hearing Commissioner, Office of Price Administration, Empire State Building, New York, New York.

[fol. 21]

EXHIBIT I TO NOTICE OF HEARING

Specification of Charges

A

Violations of Section 1394.5707

Respondent corporation was at all times mentioned herein, and more specifically between the 2nd day of November, 1942, and the 28th day of May, 1943, a dealer in fuel oil conducting its business of such fuel oil dealer within the Limitation Area, as defined in Section 1394.5001 (a) (19) of Ration Order 11, and maintaining its principal office and place of business at and within the District of Columbia. Respondent, at each of the times hereinbelow set forth, accepted transfers of fuel oil from Petrol Corporation. Respondent did not at the time of said transfers, or any of them, deliver in exchange for the fuel oil so transferred to it valid ration coupons or any other ration evidences equal in amount of gallonage value to the amount of fuel oil transferred, either at the time of such transfer, or within five days prior to said transfer, or within fifteen

days after such transfer, or at any other time. In accepting each of said transfers of fuel oil without the exchange of valid coupons or other ration evidences, respondent violated Section 1394.5707 of Ration Order No. 11, and each of said acceptances of fuel oil as aforesaid is hereby alleged as a separate and independent violation; said violations constitute Charges 1 to 187 (both inclusive) of this Specification of Charges. That the time and amount of fuel oil delivered in each of said transactions are more specifically set forth in the following table of violations (all of the matters hereinabove set forth being incorporated by reference in each of the following charges):

[fols. 22-24]

Charge Number	Date	Invoice Number	Gallons Delivered
1	November 2, 1942	A-14313	10,978
2	November 3, 1942	15327	7,962

[fol. 25] (Charges 3 to 187, inclusive, are set forth in the same manner as Charges 1 and 2, and relate to purchases from November 4, 1942, to May 28, 1943, both dates inclusive.)

B

Sales to Consumers in Violation of Section 1394.5652 (a)

188. Respondent sold and delivered 328.640 gallons of fuel oil to consumers between the 1st day of October, 1942, and the 2nd day of June, 1943, without collecting in exchange therefor valid ration coupons or other evidences as required by Section 1394.5652 (a) of Ration Order 11. The time and place of said sales, and the names of such persons to whom said fuel oil was sold cannot be set forth with any greater particularity for the reason that the same are unknown to the Office of Price Administration, but all of said transactions are well known to the officers and employees of respondent corporation.

189. On or about the 22nd day of January, 1943, respondent sold and delivered to P. Paterno, 221 Eighth Street, S. E., Washington, D. C., 240 gallons of fuel oil without requiring in exchange therefor valid ration coupons or other evidences, in violation of Section 1394.5652 (a) of Ration Order No. 11.

190. On or about the 19th day of April, 1943, respondent sold and delivered to B. E. Davis, 829 Twentieth Street, N. E., Washington, D. C., 100 gallons of fuel oil without requiring in exchange therefor valid ration coupons or other evidences, in violation of Section 1394.5652 (a) of Ration Order No. 11.

191. On or about the 20th day of January, 1943, respondent sold and delivered to R. T. Leslie, 13 East Melrose Street, Chevy Chase, Maryland, 60 gallons of fuel oil without requiring in exchange therefor valid ration coupons or other evidences, in violation of Section 1394.5652 (a) of Ration Order No. 11.

192. On or about the 15th day of March, 1943, respondent sold and delivered to Foster D. Shaver, 58 Girard Street, N. E., Washington, D. C., 72 gallons of fuel oil without requiring in exchange therefor valid ration coupons or other evidences, in violation of Section 1394.5652 (a) of Ration Order No. 11.

193. On or about the 4th day of May, 1943, respondent sold and delivered to Ray Davis, 4347 Sixteenth Street, N. E., Washington, D. C., 100 gallons of fuel oil without requiring in exchange therefor valid ration coupons or other evidences, in violation of Section 1394.5652 (a) of Ration Order No. 11.

[fol. 26] 194. On or about the 18th day of May, 1943, respondent sold and delivered 91 gallons of fuel oil to William Doeller, 1314 Twenty Eighth Street, N. W., Washington, D. C., without requiring in exchange therefor valid ration coupons or other evidences, in violation of Section 1394.5652 (a) of Ration Order No. 11.

195. On or about the 20th day of May, A. D. 1943, respondent sold and delivered 109 gallons of fuel oil to William Doeller, 1314 Twenty Eighth Street, N. W., Washington, D. C., without requiring in exchange therefor valid ration coupons or other evidences, in violation of Section 1394.5652 (a) of Ration Order No. 11.

196. On or about the 16th day of April, 1943, respondent sold and delivered to John F. Hughes, 2005 Glenn Ross Road, Silver Springs, Maryland, 100 gallons of fuel oil without requiring in exchange therefor valid ration coupons

or other evidences, in violation of Section 1394.5652 (a) of Ration Order No. 11.

197. On or about the 7th day of May, 1943, respondent sold and delivered to D. Ketchum, 4807 W Street, S. E., Washington, D. C., 100 gallons of fuel oil without requiring in exchange therefor valid ration coupons or other evidences, in violation of Section 1394.5652 (a) of Ration Order No. 11.

198. On or about the 10th day of April, 1943, respondent sold and delivered to George Cooper, 2517 Bennings Road, N. E., Washington, D. C., 92 gallons of fuel oil without requiring in exchange therefor valid ration coupons or other evidences, in violation of Section 1394.5652 (a) of Ration Order No. 11.

199. On or about the 14th day of June, 1943, respondent sold and delivered 100 gallons of fuel oil to T. B. Rice, 1444 Channing Street, N. E., Washington, D. C., without requiring in exchange therefor valid ration coupons or other evidences, in violation of Section 1394.5652 (a) of Ration Order No. 11.

200. On or about the 2nd day of February, 1943, respondent sold and delivered 78 gallons of fuel oil to William Stuart Nelson, 13 R Street, N. W., Washington, D. C., without requiring in exchange therefor valid ration coupons or other evidences, in violation of Section 1394.5652 (a) of Ration Order No. 11.

201. On or about the 19th day of February, 1943, respondent sold and delivered to Ruth E. Moses, 1327 Q Street, N. W., Washington, D. C., 162 gallons of fuel oil, and accepted in exchange therefor 18 Period "#3" Coupons, which were not on said date valid ration coupons, in violation of Section 1394.5652 (c) of Ration Order No. 11.

202. On or about the 24th day of December, 1942, respondent sold 50 gallons of fuel oil to Arthur C. Ward, 2753 Fourth Street, N. E., Washington, D. C., and accepted in exchange therefor 5 Period "3" coupons, which were not on said date valid ration coupons, in violation of Section 1394.5652 (c) of Ration Order No. 11.

203. On or about the 23rd day of December, 1942, respondent sold and delivered to Foster D. Shaver, 58 Girard

Street, N. E., Washington, D. C., 40 gallons of fuel oil and accepted in exchange therefor 4 Period "#3" Coupons, which were not on said date valid ration coupons, in violation of Section 1394.5652 (c) of Ration Order No. 11.

[fol. 27] 204. On or about the 7th day of February, 1943, respondent sold and delivered to Foster D. Shaver, 58 Girard Street, N. E., Washington, D. C., 70 gallons of fuel oil, and accepted in exchange therefor 7 Period "5" Coupons, which were not on said date valid ration coupons, in violation of Section 1394.5652 (c) of Ration Order No. 11.

205. On or about the 17th day of February, 1943, respondent sold and delivered to Mary A. Queen, 546 Twenty Fourth St. N. E., Washington, D. C., 45 gallons of fuel oil, and accepted in exchange therefor 3 Period "5" Coupons and 2 Period "2" Coupons, neither of which were on said date valid ration coupons, in violation of Section 1394.5652 (c) of Ration Order No. 11.

206. On or about the 29th day of December, 1942, respondent sold and delivered to F. S. Sennewald, 1812 B Street, S. E., Washington, D. C., 90 gallons of fuel oil, and accepted in exchange therefor 8 Period "1" Coupons and 1 Period "3" Coupon none of which were on said date valid ration coupons, in violation of Section 1394.5652 (c) of Ration Order No. 11.

207. On or about the 16th day of February, 1943, respondent sold and delivered to F. S. Sennewald, 1812 B Street, S. E., Washington, D. C., 20 gallons of fuel oil, and accepted in exchange therefor 2 Period "5" Coupons, which were not on said date valid ration coupons, in violation of Section 1394.5652 (c) of Ration Order No. 11.

208. On or about the 1st day of February, 1943, respondent sold and delivered to Nema Shadid, 1537 Massachusetts Avenue, S. E., Washington, D. C., 40 gallons of fuel oil, and accepted in exchange therefor 4 Period "2" Coupons, which were not on said date valid ration coupons in violation of Section 1394.5652 (c) of Ration Order No. 11.

209. On or about the 11th day of May, 1943, respondent sold and delivered to W. W. Warfield, Jr., 826 21st Street, N. E., Washington, D. C., 64 gallons of fuel oil, and accepted in exchange therefor 7 Period "4" Coupons, which were

not on said date valid ration coupons, in violation of Section 1394.5652 (c) of Ration Order No. 11.

210. On or about the 1st day of March, 1943, respondent sold and delivered to Levi G. Pratt, 3605 South Dakota Avenue, N. E., Washington, D. C., 97 gallons of fuel oil, and accepted in exchange therefor 10 Period "5" Coupons, which were not on said date valid ration coupons, in violation of Section 1394.5652 (c) of Ration Order No. 11.

211. On or about the 6th day of October, 1942, respondent sold and delivered to R. E. McAllister, 1708 D Street, N. E., Washington, D. C., 60 gallons of fuel oil, and accepted in exchange therefor 6 Period "2" Coupons, which were not on said date valid ration coupons, in violation of Section 1394.5652 (c) of Ration Order No. 11.

212. On or about the 29th day of December, 1942, respondent sold and delivered to R. E. McAllister, 1708 D Street, N. E., Washington, D. C., 162 gallons of fuel oil, and accepted in exchange therefor 9 Period "3" Coupons and 9 Period "4" Coupons, none of which were on said date valid ration coupons, in violation of Section 1394.5652 (c) of Ration Order No. 11.

[fol. 28] 213. On or about the 19th day of December, 1943, respondent sold and delivered to F. B. Ruff, 818 L Street, N. E., Washington, D. C., 9 gallons of fuel oil, and accepted in exchange therefor 1 Period "3" Coupons, which was not on said date a valid ration coupon, in violation of Section 1394.5652 (c) of Ration Order No. 11.

214. On or about the 25th day of February, A. D. 1943, respondent sold and delivered to F. B. Ruff, 818 L Street, N. E., Washington, D. C., 50 gallons of fuel oil, and accepted in exchange therefor 5 Period "5" Coupons, which were not on said date valid ration coupons, in violation of Section 1394.5652 (c) of Ration Order No. 11.

215. On or about the 4th day of March, 1943, respondent sold and delivered to William J. Nalley, 3200 Rhode Island Avenue, Mt. Ranier, Maryland, 225 gallons of fuel oil without requiring in exchange therefor valid ration coupons or other evidence, in violation of Section 1394.5652 (a) of Ration Order No. 11.

216. On or about the 4th day of March, 1943, respondent made an Emergency delivery of fuel oil to Claude S. Stan-

[fol. 30] EXHIBIT "4" TO COMPLAINT

UNITED STATES OF AMERICA, OFFICE OF PRICE ADMINISTRATION, OFFICE OF ADMINISTRATIVE HEARINGS, REGION II, NEW YORK, NEW YORK

Docket No. 40 S11 NY

Matter of L. P. STEUART & BRO., INC., a Corporation,
Respondent

Proceedings to Determine Whether a Suspension Order
Should be Issued

SUSPENSION ORDER AND OPINION

This matter was heard in Washington, D. C. on August 31, September 1, 18, 20 and the final arguments were presented to the Acting Hearing Commissioner on the 22nd day of October, 1943. The original notice of hearing was served on respondent on August 9th for hearing on August 19th and the hearing was continued until August 31st. The hearing was conducted in accordance with Procedural Regulation No. 4. The Regional Attorney was represented by John L. Laskey, District Enforcement Attorney and Carl W. Beruff, Assistant Enforcement Attorney of the District of Columbia District Office. Respondent appeared by its officers and agents and was represented by Renah F. Camalier, Esq., its attorney.

Respondent is a Delaware corporation and is one of the largest dealers in fuel oil, operating in the metropolitan area comprising the District of Columbia and surrounding territory with its principal place of business in Washington. Respondent is charged with having violated the provisions of Ration Order No. 11, Fuel Oil Rationing Regulations. The notice of hearing which is part of the record, contains 227 specific charges of violations which may be divided into three groups as follows:

1. The purchase of fuel oil without transferring rationing evidence.
2. The sale of fuel oil without requiring the delivery of valid rationing evidence.
3. The failure of respondent to comply with the requirements of the regulation with respect to the keeping of records.

[fol. 31] The hearing consumed four and one-half days of testimony and argument in support of and in defense of the charges. In addition thereto, the Office of Price Administration and the respondent each submitted written briefs.

At the outset of the hearing respondent raised the question as to the validity of suspension proceedings and of the power of the Acting Hearing Commissioner, not only to conduct the hearing, but to issue a suspension order. This question is one of constitutional law which the Acting Hearing Commissioner has no jurisdiction or authority to determine. The respondent was advised that the hearing was being held under Procedural Regulation No. 4 prescribed by the Office of Price Administration which safeguards the rights of respondent and accords respondent due process of law. Further comment upon the objection raised by the respondent would serve no useful purpose.

At the conclusion of the hearing respondent made a motion stating that the charges had not been proved and that the same should be dismissed. Respondent desired to present argument in support of this motion. The Acting Hearing Commissioner wanted an opportunity to read the record before passing on the motion as it embraced the entire matter in every phase. The findings of fact and the conclusions of law hereinafter set forth may therefore be considered both as a determination of the motion to dismiss, and the decision of the entire matter.

Findings of Fact

From the evidence presented at the hearing, the facts are found as follows:

1. Business of Respondent

Respondent is engaged in the business of distributing fuel oil and maintains in the District of Columbia large storage and delivery facilities and distributes from them fuel oil to a large number of consumers. It was estimated [fol. 32] that it distributes about 8% of the fuel oil delivered to consumers within the metropolitan area of the City of Washington. During the heating season of 1942-43, respondent was actively engaged in the distribution of fuel oil after Ration Order No. 11 went into effect and from

its operations the charges in this matter arose. The officers and employees of respondent responsible for its operations were well acquainted with the ration program. Beyond question respondent, through its officers, was entirely conversant with the rules and regulations applying to it as a fuel-oil distributor.

2. Unauthorized Receipt of Fuel Oil

The Government charged respondent with accepting fuel oil from the Petrol Corporation without transferring ration coupons or other evidences in exchange therefor. The specifications of charges set forth the deliveries, when the respondent accepted the transfer of given amounts of fuel oil, on 187 specifically named occasions. It was stipulated with respect to each of said deliveries that the delivery was made without the exchange of ration currency or fuel oil coupons. In each instance the delivery was made into a truck of respondent from tanks located within the District of Columbia. Between October 1, 1942 and June 2, 1943 respondent sold and delivered to consumers 5,548,972 gallons of fuel oil. The fuel-oil coupons and other evidences collected by respondent during the heating season of 1942-43 were held by it and were not used in accordance with the provisions of Ration Order No. 11 and were never surrendered by it for any purpose. Respondent denied a violation of said ration order on the theory that the oil obtained from Petrol Terminal was oil of respondent and that the surrender of ration evidence was not required by the regulations. Respondent, however, did not register the oil as its property or as in its possession at the beginning of the rationing of same. The second contention of respondent is that if its failure to surrender ration evidence was a violation or series of violations that it was the result of an honest mistake. The regulations specifically [fol. 33] forbids the acceptance of a transfer of fuel oil without the exchange of coupons. There is no ambiguity in the provisions of the regulation. Where there is an ambiguity and there is no reasonable means of obtaining the correct interpretation, honest mistake may be pleaded in extenuation. A telephone call either to the National or District Office of Office of Price Administration would have readily obtained the answer to any question and cleared any doubt which occurred to respondent. The third con-

tention of respondent is in effect that even if guilty of the violations of the regulations by failing to surrender coupons, it interfered in no manner with the rationing program and resulted in detriment to no one, injured no one and did not benefit the respondent. The third contention cannot be accepted as respondent is not permitted to set itself up as the judge of the necessity of the ration order's requirements. It is not for it to determine that certain requirements are useless and can therefore be disregarded with impunity. The charges contained in the specifications, 1 to 187, are sustained. Respondent was guilty of receiving the transfer of fuel oil in violation of the regulation.

3. Sale of Oil Without Coupons

The evidence to support the charges that respondent sold fuel oil without requiring the exchange of valid ration coupons is based upon (a) lack of sufficient coupons to account for its sales of fuel oil, (b) specific instances where fuel oil was delivered without exchange of coupons, (c) instances where deliveries were made for invalid coupons, and (d) instances where fuel oil was delivered in exchange for illegally accepted emergency delivery certificates.

The Government charged that respondent sold 328,000 gallons of fuel oil to consumers without requiring valid ration coupons in exchange therefor. In support of this charge, evidence was introduced of a count of more than 600,000 loose coupons collected by respondent during the heating season of 1942-43 made by a staff of employees furnished by the Office of Price Administration. The testimony of the young women who participated indicated that [fol. 34] this count was conducted in a rather loosely controlled manner, certainly, in a manner which does not inspire confidence in the accuracy of the results. Upon a recount of almost 50% of the coupons by an independent auditor and his staff, inaccuracies were shown to have occurred in the first count so glaring as to practically destroy the credibility of the original count. The contention of the Office of Price Administration that an estimated 328,000 gallonage shortage existed was not established by the evidence. Doubtless, some shortage in ration evidence occurred, the amount of which cannot be definitely ascertained from the evidence and it is too questionable from which to draw an inference that respondent wilfully or negligently

transferred fuel oil for which it failed to receive fuel oil coupons.

In addition to the shortage, the Office of Price Administration charged 35 specific deliveries of fuel oil in violation of the regulations. These charges were based upon the records obtained from respondent which were introduced in evidence and were attempts to show deliveries of oil without the exchange of coupons; deliveries in exchange for invalid coupons; and deliveries upon illegally accepted emergency certificates. Some of these charges the Office of Price Administration failed to sustain by uncontroverted evidence. In fact, the consumers in several instances contradicted the testimony of the Office of Price Administration in support of these charges, and the general manager for respondent categorically denied others. However, there were admissions by the general manager in a number of these instances which showed that respondent had delivered small quantities of fuel oil in exchange for invalid coupons and that on at least three occasions small quantities of fuel oil had been delivered without the exchange of any coupons. The first on the ground that it was necessary to violate either the rationing regulation or violate the regulation of the Office of Defense Transportation requiring it to conserve gasoline and tires in making its deliveries of fuel oil. Respondent admitted that the fuel oil ration regulation was violated by it in its endeavor to comply with the regulation [fol. 35] issued by the Office of Defense Transportation. From all the evidence introduced as to the shortage of fuel ration evidence obtained by respondent; from the evidence in support of the specific charges of violations, including the admissions of violations of the fuel oil regulation made by the manager of the respondent, it is impossible to conclude that respondent wilfully disregarded the fuel oil ration regulations and sold fuel oil without the collection of proper ration evidence except in a few instances which to it were violations on justifiable excuses. It is quite evident that respondent did attempt to collect and actually did collect ration coupons for most of the fuel oil delivered by it to consumers during the 1942-43 heating season. Respondent, however, through its admissions, has shown a callous disregard of its own responsibility. It failed in the duty assumed by it in the distribution of fuel oil when restrictions were necessitated by war emergency conditions; Respondent

cannot decide at what times the *re* restrictions are applicable to it and when they may be disregarded. No respondent can use as a valid defense mistakes on the part of its employees. Mistakes of employees can be used only to show that respondent's acts were not intentional. They have the same effect as intentional violations in disrupting the equitable distribution of oil under the rationing system and are the responsibility of respondent which cannot carelessly be tossed aside.

4. *Record Keeping Requirements*

Respondent is charged with its failure to keep records which comply with the requirements of Fuel Oil Ration Order No. 11. There is no doubt that the records of respondent were not as full and complete as required by the regulations. Respondent's failure to place its coupon stamps on gummed sheets and its failure to keep a permanent record of deliveries of oil which it claims to have kept upon the coupon stubs which were later returned to consumers are two instances of respondent's disregard of the rationing regulations. However, the regulations do not [fol. 36] prescribe any specific method of keeping records which must be followed by fuel oil dealers. When the impact of rationing of fuel oil came and threw on the dealers added burdens, only reasonable requirements as to record-keeping were demanded and made part of the regulations. Respondent's excuse for not complying with these reasonable requirements was a shortage of competent man-power. Although the difficulties which beset respondent were great, the same difficulties, coming from the lack of competent help, were common to all the industry. It is very much doubted that respondent put forth a reasonable effort to comply strictly with the provisions of the regulations in maintaining its records. Records which are sufficient for respondent's own information may prove wholly inadequate for the purpose of showing compliance on its part with the provisions of rationing the product it distributes. While the Acting Hearing Commissioner is resolving the benefit of the doubt in respondent's favor on this charge, he is inclined to censure the manager of respondent for his shortcomings in this as well as in other particulars where he failed to properly discharge the trust imposed in him.

5. Is Respondent's Business Essential

It is contended by the Office of Price Administration that respondent's facilities and business could safely be dispensed with in the Washington metropolitan district without causing undue hardship to the public. In support of this contention, evidence was adduced of a survey made as to fuel oil suppliers located in and near the District of Columbia. The conclusion reached by the witnesses who conducted this survey was that a suspension of respondent's right to continue in the fuel oil distribution would not be against the public interest. There was equally competent testimony from others engaged in the fuel oil industry, who have first-hand knowledge of the same in the district that respondent serves, whose opinions were equally strong that the suspension of respondent would cause undue hardship and that the suspension of respondent's operations would not be in the public interest. At best, the most [fol: 37] that can be said about this phase of the matter as presented at the hearing is that equally competent men are not in agreement as to respondent's essentiality to the public. The conclusion, however, of the Acting Hearing Commissioner from all the evidence presented at the hearing does not require a decision to be reached on this question. What the economic effect of a suspension might be is at best a matter of opinion. Unless respondent has shown itself wholly untrustworthy to continue to enjoy the conditional right of engaging in rationing the right should not be suspended. An order which will require better compliance with the rationing regulations is the proper goal to be reached, rather than run the risk of injury to the public by taking away respondent's right to continue in the rationing program.

In addition to the foregoing, the evidence showed the difficulties of respondent, its man-power shortage, the panicky demands for fuel oil by the public and restrictions imposed on it by other governmental agencies during the heating season of 1942-43. The difficulties encountered by the respondent during the period covered by the hearing by reason of amendments to the fuel oil rationing regulations and by better distribution during the past summer months should not again be encountered. All fuel oil distributors who suffered from the confusion caused during the early months of fuel oil rationing are now in a better

position to conduct their business in a more orderly fashion. Violations of the regulation heretofore excused or overlooked by reason of those mitigating circumstances cannot again be offered for even technical violations of the rationing regulations in the future.

Conclusions of Law

(1) In accepting the transfer of fuel oil without payment in exchange therefor either valid coupons or other ration evidences, respondent violated the provisions of Section 1394.5707 of Ration Order No. 11.

(2) Respondent by the transfer of fuel oil to consumers without requiring the exchange of ration coupons likewise violated Section 1394.5652 of Ration Order No. 11.

[fol. 38] (3) In accepting coupons which at the time were not yet valid for the delivery of oil, respondent admitted the violation of Section 1394.5458 of Ration Order No. 11.

(4) And although it was not charged and used as a basis of complaint at the hearing, respondent violated Section 1394.5721 of Ration Order No. 11 by its failure as a dealer to properly care for the fuel oil coupons received by it during the heating season of 1942-43.

Congress wisely granted to the President the power to allocate scarce materials during the war emergency. Fuel oil was determined to be a scarce commodity by the responsible officers into whose hands its proper allocation was delegated. Ration Order No. 11 was promulgated by the Office of Price Administration as the best means of properly allocating fuel oil to all consumers within the limitation areas. The Rationing Program in itself placed a burden on the petroleum industry and on all those who distribute fuel oil. Difficulties were generally met by those engaged in the program and fortunately most of them were overcome after the period of confusion was passed. The claim by respondent that all of its difficulties arose from the confusion caused by rationing, by man-power shortage, and by the additional burden of complying with other governmental regulations cannot be accepted as an excuse for respondent's not making a more whole-hearted attempt to comply with the fuel oil regulations. Many doubts as to respondent's good faith have been resolved in its favor dur-

ing the course of the hearing and in the consideration given this matter. By permitting respondent to continue to engage in the sale of oil and in the rationing program, it was accorded a position of high trust from which a reciprocal duty of high fidelity to the public was and is owed by it. Respondent in several particulars has failed in that trust and through negligent conduct has in a measure disqualified itself as a proper participant in the rationing program. Respondent's plea of good faith and that it had complied with the spirit of the rationing program, if not with the actual letter thereof, raises the doubt as to the lack of its [fol. 39] efforts which caused it to fall short of the conduct reasonably to be expected from it as a dealer.

After careful consideration, certain restrictions seem necessary to be imposed on respondent which will, while enabling respondent to continue in business, require it to make certain adjustments in its organization so as to comply with more than the spirit of the rationing program. Respondent's attitude seems to have been, from the evidence of its manager, that its primary concern was to obtain fuel oil and deliver it to its customers during the heating season of 1942-43 and that compliance with the rationing program received secondary consideration. The fullest cooperation of respondent is necessary for the proper distribution of the strategic war commodity it distributes, in the metropolitan Washington district.

For the foregoing reasons it is therefore Ordered that

1. From December 1st, 1943 to December 31, 1944, both dates inclusive, respondent shall not receive the transfer of fuel oil, directly or indirectly, from any source, without the surrender of valid ration currency nor shall it transfer any fuel oil directly or indirectly, to any consumer to whom it made no transfer of fuel oil from July 1st, 1942 to July 1, 1943 and then only on the following conditions:

(a) Respondent shall prepare a list of all consumers including the addresses of same to whom it made transfers of fuel oil from July 1, 1942 to July 1, 1943 and shall deliver a verified copy of said list to the District Enforcement Attorney of the District of Columbia District Office.

(b) Respondent shall furnish to said District Enforcement Attorney satisfactory evidence that it has delivered proper ration coupons or other evidences

in exchange for all oil received by it since June 1, 1943 and shall during the period of this suspension furnish to said Enforcement Attorney on or before the fifth day of each month satisfactory evidence of proper exchange of ration currency for fuel oil received by it during the preceding month.

(c) Respondent shall set up and currently maintain proper records open for inspection during business hours which meet the requirements of Ration Order No. 11 as to records to be kept by dealers.

[fols. 40-48] 2. Notwithstanding the prohibition in paragraph one hereof, respondent may acquire and transfer fuel oil to consumers to whom it transferred fuel oil from July 1, 1942 to July 1, 1943 for valid ration currency or evidences and in strict compliance with Ration Order No. 11.

3. Any terms used in this suspension order that are defined in Ration Order No. 11, Fuel Oil Rationing Regulations shall have the meaning therein given to them.

Issued this 8th day of November, 1943 at Washington, D. C.

(S.) Clifford R. Snider, Acting Hearing Commissioner, Office of Price Administration, Region II.

[fol. 49] EXHIBIT "7" TO COMPLAINT

United States of America

Office of Price Administration

Office of Administrative Hearings

Docket No. 2-1475 A

In the Matter of L. P. STEUART & BRO., INC., a Corporation,
Respondent

Proceedings to Determine Whether a Suspension Order
Should be Issued

DECISION ON APPEAL

TALBOT SMITH, Hearing Administrator:

Both the respondent and the Regional Attorney by his duly authorized enforcement attorney for the Office of Price

Administration in the District of Columbia have appealed from a suspension order issued in this matter by a Hearing Commissioner on November 8, 1943. Appeal Briefs were filed by both sides, and, the matter was orally argued before the Hearing Administrator on December 18, 1943. The operation of said order has been stayed pending determination of this appeal.

In both notices of appeal and in the briefs each side takes exception to certain findings of fact and conclusions of law of the Hearing Commissioner. The Enforcement Division has requested a modification of the suspension order, while respondent seeks to have the order set aside and the charges dismissed. Respondent also raises issues as to the validity, legality and constitutionality of these proceedings held pursuant to Procedural Regulation No. 4, as amended.

The jurisdictional issue raised by respondent are not matters upon which either the Hearing Commissioner or the Hearing Administrator is empowered to pass. The authority for the conduct of rationing suspension order proceedings is based upon certain Congressional acts (Pub. Law 671, 76th Cong., 54 Stat. 676 as amended by Pub. Law 89, 77th Cong., 55 Stat. 236 and Pub. Law 507, 77th Cong., 56 Stat. 176), executive orders (E. O. 9125, April 7, 1942, E. O. 9280, Dec. 5, 1942), directives (W. P. B. Dir. No. 1 and supplementary W. P. B. directives), and orders of the Administrator of the Office of Price Administration (Gen. Order 46, issued Feb. 6, 1943, 8 F. R. 1771; amended 8 F. R. 2072). It is a well-established rule of law that an administrative tribunal may not pass upon the validity of the statutes or orders that create it. This principle, of course, does not preclude respondent from raising such an issue in a proper forum.

The record in this matter, stripped of the extravagant characterizations attributable to zealous advocacy, clearly establishes the fact that, on the basis of volume of transfers, respondent is the third largest dealer in fuel oil in the City of Washington, D. C., but the total capacity of its fuel oil storage facilities from September 30, 1942 up to July 29, 1943 was only 16,850 gallons according to its own declaration of storage capacity.

Respondent's supplier, Petrol Corporation of Philadelphia, Pennsylvania, during this period had storage facilities in Washington with a capacity of at least 3,405,810

gallons. Through contractual arrangements with Petrol, respondent, as a dealer, became entitled to large quantities of fuel oil from the latter during the 1942-43 heating year.

During the latter part of December 1942 and the early part of January 1943 there was an acute fuel oil shortage in Washington as a result, apparently, of poor distribution of available supplies of fuel oil among dealers. During this period the Petrol Corporation was the only primary supplier with fuel oil on hand in the City of Washington and whatever Petrol had in its Washington storage facilities was made available to only one dealer in the city—the respondent. The demands upon it were, therefore, heavy. In fact at a time when the delivery equipment of other dealers was idle for lack of fuel oil supplies, respondent was ten days behind in its deliveries (except for emergency cases). This unprecedented demand for oil imposed upon the respondent corporation a duty commensurate therewith to distribute such oil only in accordance with the rationing regulations. How well the respondent fulfilled its obligation may now be considered.

[fol. 50] The notice of hearing sets forth 227 specific charges of violations by the respondent. These may be divided into three groups as follows:

1. The acceptance of transfers of fuel oil by respondent without surrendering in exchange therefor valid ration coupons or other evidences.

2. The transfers of fuel oil by respondent to consumers without receiving in exchange therefor valid rationing evidences.

3. Failure of respondent to maintain records of transfers as required by the regulations.

The first set of charges—Nos. 1 to 187 inclusive—in the notice of hearing charged that between October 1, 1942 and June 2, 1943 respondent received transfers of 5,548,973 gallons of fuel oil without surrendering to its supplier, Petrol Corporation, in exchange therefor ration coupons, exchange certificates or any form of ration evidence. There is no dispute as to this fact. It was admitted and stipulated by respondent and remains undenied and unexplained by any of the evidence adduced by respondent. In its brief respondent advances the specious argument that since re-

spondent bought and paid for its fuel oil well in advance of delivery it was receiving its own fuel oil when Petrol Corporation delivered fuel oil from its storage facilities into the tank trucks of respondent. The definitions of the word "transfer" as contained in Ration Order No. 11, Section 1394.5001(a)(35) make clear that the transactions between Petrol Corporation and respondent after the effective date of Ration Order No. 11—October 22, 1942 were subject to all requirements of the rationing regulations, including that of exchanging ration evidences for transfers or deliveries of fuel oil irrespective of the date of any contract therefor. Any doubts on this point will disappear upon reference to Section 1394.5662 of Ration Order No. 11, governing the rights of parties to contracts for transfers of fuel oil.

The acceptance by the respondent, of this enormous gallonage of fuel oil without surrendering ration evidence therefor to its supplier constituted a serious breakdown in the flow-back system which is the heart of the rationing program. As we pointed out in the Petrol Corporation proceedings (Docket No. 2-58A):

"The successful operation of the rationing plan or system adopted is dependent upon the timely and uninterrupted 'flow-back' of ration evidences. This means that coupons or other evidences must accompany the transfer of fuel oil at each successive level from the consumer, through the dealer, to the primary supplier, who, in turn, must account monthly for his receipts and transfers of fuel oil within the limitation area . . . Rationing to consumers cannot be enforced or controlled unless coupons or other evidences flow upstream to ultimately balance with the total amount of fuel oil transferred. . . ."

"Without timely compliance with these essential control requirements at all stages, the rationing system cannot function effectively, its purposes are thwarted, scarce fuel oil is distributed through uncontrolled channels, the entire ration system is disrupted, and while some consumers get more than they are entitled to receive, others are unable to obtain their full allotments."

Respondent's dereliction in this regard was flagrant and had the most serious consequences. Its violation caused its

supplier, the Petrol Corporation, to become delinquent in its compliance with the rationing program and played a part in the suspension order proceedings brought against the latter. It is possible, moreover, that the respondent's determination not to furnish ration evidences to its supplier accounts in part at least for the complete indifference exhibited by the respondent not only in obtaining, in turn, ration evidences from its consumers, but in the care and recording of such as it did receive. Thus we are brought to a consideration of the second and third groups of charges.

[fol. 51] The second set of charges allege that respondent transferred fuel oil on numerous occasions without requiring the surrender of currently valid ration currency. There was a general charge (No. 188) that respondent had delivered 328,640 gallons between November 2, 1942 and June 2, 1943 without receiving valid ration currency therefor.

This charge was substantiated by the results of a count of more than 600,000 coupons accumulated by respondent last year. When respondent's failure to give Petrol Corporation ration currency for fuel oil transfers came to the attention of the Enforcement Division and an investigation of respondent's activities became necessary, respondent turned over to the District Enforcement attorneys a number of cartons filled with unsorted fuel oil ration coupons of all denominations. Though requested by the Office of Price Administration to assist with these coupons, both in their count and in supervision of the count, respondent refused to do so. Under these circumstances the count was made by employees of the Office of Price Administration.

It is important to note that the counting of the coupons was a burden to be borne entirely by the respondent not only because of its obligation under the regulations to do so but also if it sought to establish a degree of mitigation of the admitted violations set out in charges Nos. 1 to 187 inclusive. Nevertheless respondent neglected its obligation and this burden had to be assumed by the Office of Price Administration for a secondary purpose, viz:—to establish the fact that the respondent's violations were not merely technical but actually made possible the delivery of fuel oil to consumers without the exchange of valid ration coupons. Such deliveries, of course, violated the fundamental principle of the rationing of scarce commodities.

The count of the Office of Price Administration revealed a coupon shortage of 328,640 gallons. This count assigned to each coupon its true value during the period of its validity. That is, it took into account the reduction in value of the 10-gallon coupon to 9-gallon and the 100-gallon coupon to 90 gallons during the third and fourth periods beginning January 4, 1943 and ending March 6, 1943.

Although respondent had possession of the ration evidences prior to May, 1943, had been requested to assist in the count originally and had ample time to conduct the count after the institution of the proceedings, at which time it was apprised of the contents of Charge No. 188, it was not until August 31, 1943, (during the course of the hearing) that respondent undertook to make a count of its own. It then was accorded this opportunity and engaged a certified public accountant for this purpose. Accounting students in his employ and other personnel of his office made a partial check of the count of the Office of Price Administration, counting the contents of 100 of the 211 envelopes containing ration evidences. By the time the respondent's accountant received the coupons they had already been sorted and placed into 211 envelopes. These were in marked contrast to the chaotic condition in which the Office of Price Administration investigators found them.

Respondent's accountant, in his attempt to impeach the count of the Office of Price Administration on the basis of his check of 100 of the 211 envelopes of coupons, claimed that the count was inaccurate in that it failed to properly credit respondent with coupons having a total value of 70,417 gallons. Assuming that the same proportion of error existed in the balance of the envelopes which the accountant did not check, the total error, according to respondent's theory, would be approximately 147,000 gallons. If respondent is given full credit for this alleged error, there would still remain the very substantial shortage of approximately 181,000 gallons.

However, in making his check upon the Office of Price Administration count, the respondent's accountant assigned original values to all of the coupons and failed to make adjustment for the reductions in coupon values during the months of January and February 1943. Thus the accountant's claim that the Office of Price Administration count was inaccurate was predicated upon the assignment of

values to coupons that were not in accord with the facts. The failure to make adjustment in the Period 3 and Period 4 coupons materially increases the 181,000 gallon shortage indicated by respondent's figures.

[fol. 52] We are satisfied from the proof, and have no difficulty in finding, that there was a substantial shortage in respondent's coupons indicating transfers of large quantities of fuel oil to consumers without receiving in exchange therefor valid ration evidences. We cannot agree with the Commissioner below that the Office of Price Administration count was so discredited that it should be entirely disregarded. Whether the shortage totalled 328,640 gallons or some slightly smaller percentage (respondent's accountant indicated that there was a 2 percent difference between his count and that of the Office of Price Administration) is not material in view of the clear proof that substantial quantities of fuel oil were delivered by respondent in clear violation of the rationing regulations.

The second set of charges involved also a series of allegations of specific instances of improper deliveries to consumers. They were taken from among 400 accounts examined during a spot-check of respondent's activities, respondent serving more than 4000 consumer accounts during the period under investigation.

It is not necessary for us to detail each of the specific cases cited in this group of which at least 13 of the violations charged were admitted or proved even though respondent offered certain mitigating explanations with reference to a number of them. The record is replete with proof that respondent did commit, with reference to transfers to consumers, practically every sort of violation known to the regulations—making deliveries for expired coupons, unexpired coupons, no coupons at all and making emergency deliveries in excess of the quantities permitted.

It is true that many of the specific charges in this latter group (from No. 189 to No. 224) if considered apart from the others, may seem relatively unimportant. In some instances, also, plausible explanations were offered. However, it must be remembered that the charges were based upon a sampling of only 10% of respondent's consumer accounts. Taken in the aggregate, we find sufficient evidence in the record to show that in its transfers to consumers respondent violated the rationing regulations to a

marked degree and to that extent thwarted the rationing program.

The third set of charges alleges respondent's non-compliance with the record-keeping requirements of the regulations. Section 1394.5656 of the Fuel Oil Rationing Regulations prior to its amendment on June 30, 1943 provided:

"Every dealer and supplier shall keep a record of each transfer to a consumer of a quantity of fuel oil in excess of ten (10) gallons. Such record show the name and address of the transferee, the date of the transfer, the amount (and, in the case of residual oil, the grade) of fuel oil transferred and the number and serial numbers of coupons (all delivery receipts) detached. Such records shall be preserved for at least one year. * * *

Respondent claimed that it complied with the foregoing requirement by noting the information called for on the coupon stubs of the ration holders' coupon books (Form OPA R-1105 C), and that 95% of its customers deposited their ration books with it. Thus by its own admission in at least 5% of the cases it had no records of deliveries as required by Section 1394.5656. However, the more serious defect in respondent's defense to this charge arises from the fact that the stubs of the coupon books deposited with the respondent were required to be returned to the consumers at the end of the heating year or when all coupons were detached. The consumers needed these stubs to obtain their next year's fuel oil rations. The so-called records, then, were the consumers', not the respondent's. They were not in a form in which they could possibly be retained by the respondent for the period of one year as called for by Section 1394.5656. It is clear that this section required a dealer to keep separate records of its own in such form that it could account for each and every one of its consumer deliveries and could retain the same for a period of at least one year. Furthermore, respondent was required to keep records of deliveries from the inception of fuel oil rationing in October of 1942, long before it received the deposits of its customers' ration books. Respondent completely ignored this section of the regulations without which the control necessary to any rationing program is impossible.

[fol. 53] We noted, at the outset of this opinion, the unique position in which the respondent corporation found itself as regards its supply of the rationed commodity it was engaged in selling, we adverted to its unprecedented volume of orders, and we directed our attention to the question of the manner of its performance, in this position of trust and responsibility, of its war-imposed obligations.

We are now in a position to answer that question. The facts are clear. The respondent violated the rationing regulations in every important aspect. The most serious of the violations, are, in fact, admitted. In defense and in mitigation, the respondent takes the singular position that it conceived its first duty to be the supplying of its customers with oil and that conformity with the requirements of the rationing system was subordinate thereto.

Such a position merits careful examination. The philosophy expressed, if sound, is equally applicable to other persons and to other enterprises. In fact, the young business man with his induction notice could with equal logic reply that his duty to his customers came first and conformity with the requirements of the Selective Service Act second. We need not elaborate upon the effect of such courses of conduct upon the prosecution of the war.

The respondent's practice of putting its customers first and its war-time obligations later can neither be condoned nor excused. Upon a reading of the whole record in this case, the conclusion is inescapable that the respondent was seriously deficient in that standard of war-time conduct imposed upon all who deal in commodities so vital and so scarce as to require rationing. We will not speculate as to the motives prompting the respondent's indifference but the lesson of the Golden Calf, found in the Thirty-Second Chapter of the Book of Exodus would seem not inappropriate for the respondent's most serious consideration.

In view of all the circumstances in this matter we agree with the Hearing Commissioner that it is in the interest of national defense and the public welfare that the allocation of fuel oil to respondent as a dealer be decreased so that respondent may be enabled the better to comply with the fuel oil rationing regulations and to carry out its responsibilities as a distributor of a rationed commodity in time of

war. The language of the *Petrol* opinion, *supra*, on this point is appropriate:

"... the plan of rationing adopted by this country presupposes equal trustworthiness in all and permits equal participation, initially, in the handling of scarce commodities. It is only after demonstrated unworthiness or inability that the burden is lessened to that which may safely be borne. In some extreme cases of wanton indifference or malevolent design it may be (and has been) determined that for the duration of the war such individuals should not again be trusted with scarce commodities. For others, those who have been careless, or to some extent indifferent or callous, a period of suspension of the privilege of handling the critically scarce commodity will serve the purpose of enabling the distributor to put his house in order, to set up a system of controls, to indoctrinate inefficient or careless help, and to make himself ready in all respects for a continued assumption of his duty of careful distribution."

We have no way of knowing how many customers the respondent corporation can serve while at the same time faithfully observing the rationing regulations. But we do know from its clearly established violations from the very inception of fuel-oil rationing that the number it then served approached the upper limit of its capacity since the fact is clear that it did not (whether it would not or could not) thereafter both service this number and simultaneously comply with the rationing regulations. Additional customers, then, clearly impose a burden which the respondent cannot bear.

Accordingly, it is Ordered that the suspension order heretofore issued by the Hearing Commissioner be modified to read as follows:

[fol. 54] A. From January 15, 1944 to December 31, 1944, both dates inclusive, respondent shall not, directly or indirectly, receive delivery of fuel oil for resale or transfer to any consumer, nor shall respondent transfer fuel oil to any consumer, provided that (1) if respondent on or before January 10, 1944 delivers to the District Enforcement Attorney of the District of Columbia District Office a duly verified list of the names and addresses of all con-

sumers to whom respondent sold and delivered fuel oil from October 21, 1941 through October 21, 1942, and (2) if respondent surrenders to the District of Columbia District Office before January 15, 1944 all void or expired ration evidences (or delivery receipts) then in its possession; then and in that event respondent may from January 15, 1944 to December 31, 1944, both dates inclusive, transfer fuel oil to any consumer to whom it transferred fuel oil between October 21, 1941 through October 21, 1942, both dates inclusive, and may receive deliveries of sufficient quantities of fuel oil for purposes of resale and transfer to such consumers.

B. Within thirty (30) days after the receipt of a copy of this order, respondent shall render an accounting to the Director of the District of Columbia District Office (1) for all fuel oil transferred or received by the respondent during the period from 12:01 a. m., October 22, 1942, to the date of such accounting, (2) for all coupons, ration evidences (or delivery receipts) received by or surrendered by the respondent during said period, and (3) showing the quantity of fuel oil (by physical inventory), and coupons, ration evidences (or delivery receipts), on hand and on deposit in its ration bank account as of the date of said accounting.

C. If at any time during the period of this suspension the Petroleum Administrator for War or his duly authorized agent certifies to the Director of the District of Columbia District Office that the fuel oil needs of the District of Columbia or the area served by respondent cannot be met by the supplies and facilities of other suppliers and dealers in this area in addition to those of respondent's as herein restricted, and that it is, therefore, essential to the welfare of the community that the provisions of this order should be modified, and the District Director joins with respondent in a petition requesting such modification, an order of modification may be entered either by the Chief Hearing Commissioner of Region II or the Hearing Commissioner who heard the case below removing the restrictions herein imposed to the extent such action is shown to be necessary to the welfare of the community or the war effort.

D. Any terms used in this suspension order that are defined in Ration Order No. 11, shall have the meaning therein given to them.

Dated: December 31, 1943.

[fol. 55] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

MOTION FOR TEMPORARY RESTRAINING ORDER—Filed January 7, 1944

Comes now the plaintiff by its attorney, Renah F. Camalier, and respectfully moves this Honorable Court to enter a Temporary Restraining Order, restraining the defendants and each of them from enforcing or attempting to enforce a certain order of Talbot Smith, Hearing Administrator, Office of Price Administration, dated December 31, 1943 (more fully described in the plaintiff's Complaint herein), or any part or portion of said order.

For grounds in support of the above Motion the plaintiff shows the Court that the said Order by its terms, will, unless the enforcement thereof is restrained, become effective prior to the time required for the defendants' answer herein, and prior to the time when the plaintiff's motion for a preliminary injunction herein can be heard; and that the plaintiff will suffer immediate and irreparable injury, loss, and damage unless the enforcement of the said [fol. 56] order is enjoined and restrained.

For its memorandum of points and authorities in support of the above Motion, the plaintiff refers to its memorandum of points and authorities in support of its motion for a preliminary injunction.

(S.) Renah F. Camalier, 1366 National Press Building, Washington, D. C., Attorney for Plaintiff.

[fol. 57] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

MOTION FOR PRELIMINARY INJUNCTION—Filed January 7, 1944

Comes now the plaintiff by its attorney, Renah F. Camalier, and respectfully moves the Court for a Preliminary Injunction, enjoining the defendants *pendente*

lite from enforcing or attempting to enforce a certain order of Talbot Smith, Hearing Administrator of the Office of Price Administration, bearing date December 31, 1943, and more fully described in the Complaint herein.

For grounds in support of the above Motion plaintiff will urge that irreparable injury, loss, and damage will result to the plaintiff if the same Order is enforced, and that said Order by its terms becomes effective in part on January 10, 1944, and as to the remainder on January 15, 1944, both dates being before an adjudication can be had on the complaint herein.

(Sgd.) Renah F. Camalier, 1366 National Press Building, Washington, D. C., Attorney for Plaintiff.

[fol. 58] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

L. P. STEUART & BRO., INC., a Corporation, Plaintiff,

v.

CHESTER BOWLES, Administrator, Office of Price Administration, Federal Office Building No. 1, Washington, D. C.; Robert K. Thompson, District Director, District of Columbia, Office of Price Administration, 5601 Connecticut Avenue, N. W., Washington, D. C.; John L. Laskey, District Enforcement Attorney, District of Columbia, Office of Price Administration, 5601 Connecticut Avenue, N. W., Washington, D. C., Defendants

TEMPORARY RESTRAINING ORDER—Filed January 7, 1944

This cause came on for hearing upon motion of the plaintiff herein for a Temporary Restraining Order, which motion was argued by the attorney for the plaintiff and attorneys for the defendants, and it appearing to the Court that the plaintiff herein is a Corporation, a part of whose business consists of the selling at retail of fuel oil, and it further appearing that there was issued on December 31, 1943, by Talbot Smith, Hearing Administrator of the Office of Price Administration, a certain order reading as fol-

lows (the plaintiff herein being referred to as Respondent in said Order):

A. From January 15, 1944 to December 31, 1944, both dates inclusive, respondent shall not, directly or indirectly, receive delivery of fuel oil for resale or transfer to any consumer, nor shall respondent transfer fuel oil to any consumer, provided that (1) if [fol. 59] respondent on or before January 10, 1944 delivers to the District Enforcement Attorney of the District of Columbia District Office a duly verified list of the names and addresses of all consumers to whom respondent sold and delivered fuel oil from October 21, 1941 through October 21, 1942 and (2) if respondent surrenders to the District of Columbia District Office before January 15, 1944 all void or expired ration evidences (or delivery receipts) then in its possession, then and in that event respondent may from January 15, 1944 to December 31, 1944, both dates inclusive, transfer fuel oil to any consumer to whom it transferred fuel oil between October 21, 1941 through October 21, 1942, both dates inclusive, and may receive deliveries of sufficient quantities of fuel oil for purposes of resale and transfer to such consumers.

B. Within thirty (30) days after the receipt of a copy of this order, respondent shall render an accounting to the Director of the District of Columbia District Office (1) for all fuel oil transferred or received by the respondent during the period from 12:01 a. m., October 22, 1942, to the date of such accounting, (2) for all coupons, ration evidences (or delivery receipts) received by or surrendered by the respondent during said period, and (3) showing the quantity of fuel oil (by physical inventory), and coupons, ration evidences (or delivery receipts), on hand and on deposit in its ration bank account as of the date of said accounting.

C. If at any time during the period of this suspension the Petroleum Administrator for War or his duly authorized agent certifies to the Director of the District of Columbia District Office that the fuel oil needs of the District of Columbia or the area served by respondent cannot be met by the supplies and facilities of other suppliers and dealers in this area in addition

to those of respondent's as herein restricted, and that it is, therefore, essential to the welfare of the community that the provisions of this order should be modified, and the District Director joins with respondent in a petition requesting such modification, an order of modification may be entered either by the Chief Hearing Commissioner of Region II or the Hearing Commissioner who heard the case below removing the restrictions herein imposed to the extent such action is shown to be necessary to the welfare of the community or the war effort.

D. Any terms used in this suspension order that are defined in Ration Order No. II, shall have the meaning therein given to them.

and it further appearing to the Court that the Complaint herein asserts that the aforesaid order and the proceedings upon which it was based are illegal and void and that the Office of Price Administration is without lawful authority to issue such an order, and it further appearing that [fol. 60] the defendants do and will contend herein that the said order and the proceedings upon which it is based are lawful and valid and authorized by statute, executive orders, directives, and regulations, and it appearing that portions of the said order will by its terms become effective on January 10, 1944, and the remainder on January 15, 1944, both dates being prior to the expiration of the time required by the rules of this Court for the filing of an answer, and it further appearing to the Court that the plaintiff may sustain irreparable damage if the said order or any part thereof be enforced prior to the determination by this Court of the issue as to its validity and the authority of the Office of Price Administration to issue such an order, it is, by the Court, this 7th day of January, A. D., 1944

Ordered that the defendants herein, Chester Bowles, Administrator, Office of Price Administration, Robert K. Thompson, District Director, District of Columbia, Office of Price Administration, and John L. Laskey, District Enforcement Attorney, District of Columbia, Office of Price Administration, in their official capacities as aforesaid, their deputies and agents, and each of them be and they hereby are restrained and enjoined from enforcing or at-

tempting to enforce the said order of Talbot Smith, Hearing Administrator, hereinabove set forth, or any part thereof; Provided, That this order shall expire on midnight, January 14, 1944, unless extended for good cause shown or unless the defendants consent that it may be extended for a longer period, and Provided, further, That the plaintiff shall furnish its undertaking, with corporate surety approved by this Court, in the sum of \$1,000.00 conditioned for the payment of such costs and damages as may be incurred or suffered by the defendants or any party who may be found by this Court to have been wrongfully enjoined or restrained.

(S.) T. Alan Goldsborough, Justice.

Issued 4:05 P. M.

[fol. 61] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

JOINT AND SEVERAL ANSWERS OF DEFENDANTS—Filed January 14, 1944

Come now the defendants, and each of them, in the above entitled cause, and for their joint and several answer to the complaint herein say:

1. The defendants admit the allegations contained in Paragraph 1 of said complaint.

2. The defendants admit and allege that at all times material to these proceedings the plaintiff was and is engaged in the retail sale of various types of fuel oil and other products. Defendants further allege that on or about the 19th day of October, 1942 pursuant to the authority duly conferred upon him, Leon Henderson, then Administrator of the Office of Price Administration, issued Ration Order No. 11, Fuel Oil Rationing, (7 F. R. 8480) effective October 22, 1942; that at all times since October 22, 1942, the plaintiff herein has been and still is a dealer at retail of fuel oil within the meaning of and subject to the provisions of said Ration Order No. 11. Defendants deny each and every other allegation set forth in paragraph 2 of the complaint herein.

3. Defendants allege that on February 6, 1943, pursuant to the authority duly conferred on him, Prentiss M. Brown, then Administrator of the Office of Price Administration, issued Procedural Regulation No. 4, effective March 1, 1943 (8 F. R. 1744, 2035), prescribing the procedure for the issuance of rationing suspension orders by the Office of Price Administration. The defendants further admit and allege that exhibit 1 attached to the plaintiff's Complaint is a true and correct copy of Procedural Regulation No. 4.

4. Defendants admit the allegations and averments set forth in paragraph 4 of the plaintiff's Complaint herein. Defendants allege that in each of the acts therein set forth the persons named were acting pursuant to authority validly delegated to them as officers and employees of the Office of Price Administration.

5. Defendants allege that pursuant to said Notice of Hearing a full, fair and impartial hearing was held on August 31, 1943, September 1, 1943, September 18, 1943, September 20, 1943, and October 22, 1943 before Clifford R. Snider, Acting Hearing Commissioner, Office of Price Administration, Region II. On November 8, 1943, the said Hearing Commissioner issued a suspension order and opinion. Exhibit 4 of plaintiff's Complaint is admitted to be a true copy of said suspension order.

6. In accordance with the provisions of said Procedural Regulation No. 4, plaintiff appealed to the Hearing Administrator from the aforesaid suspension order of the Hearing Commissioner. Exhibit 5 is admitted to be a true copy of plaintiff's Notice of Appeal. The defendant, John L. Laskey, in his official capacity, also appealed from the said order of the Hearing Commissioner, in accordance with the provisions of said Procedural Regulation No. 4. Exhibit 6 to plaintiff's Complaint is admitted to be a true copy of his Notice of Appeal. After hearing, the Hearing Administrator on December 31, 1943 issued his Decision on Appeal, modifying the order of the Hearing Commissioner. Exhibit 7 to plaintiff's Complaint is admitted to be a true copy of said Decision on Appeal.

7. Defendants deny each and every allegation set forth in Paragraph 7 of Plaintiff's Complaint herein, and on the contrary allege that the suspension order issued on De-

ember 31, 1942, by Talbot Smith, Hearing Administrator, was and is a valid exercise of the allocation power granted to the President of the United States by the Act of June 28, 1940 (54 Stat. 676), as amended by the Act of May 31, 1941 (Priorities and Allocations Act) (55 Stat. 236), and by Title III of the Second War Powers Act, 1942 (56 Stat. 176, 50 U. S. C. (Supp. II) Sec. 631 et seq.), and delegated to the Office of Price Administration.

8. Defendants allege that the Hearing Commissioner and the Hearing Administrator properly declined to consider the question of lack of statutory authority to issue administrative suspension orders under the aforesaid Acts, upon the ground that such an inquiry was beyond the scope of their authority, preserving to the plaintiff the right to raise said issue in any proper forum.

9. As to the allegations of paragraph 9 of said Complaint, the defendants say that they are without knowledge or information sufficient to form a belief as to the truth of the averments therein and therefore deny the same.

10. As to the matters set forth in Paragraph 10 of the plaintiff's Complaint herein, the defendants allege that the order complained of is a valid exercise of the allocation power and that any injury to the plaintiff therefrom is not injury or damage for which equity will afford relief.

[fol. 64] Wherefore, these defendants pray that this action be in all things dismissed, and that these defendants and each of them be dismissed with their proper costs and disbursements.

Dated January 14, 1944.

(S.) Fleming James, Jr. Director, Litigation Division;
(S.) Harry L. Shniderman, Attorney; Office of Price Administration Federal Office Building No. 1, 2nd & D Streets, S. W., Washington, D. C.

(S.) John L. Laskey, District Enforcement Attorney;
(S.) Carl W. Berueffy, Attorney.

[fol. 65]

[File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER CONTINUING RESTRAINING ORDER—Filed January 14,
1944

This cause came on for hearing on the motion for a preliminary injunction, and, after argument of counsel for the plaintiff and for the respective defendants on said motion, the Court takes the said motion under advisement; and it appearing to the Court that the temporary restraining order entered herein on, to wit, January 7, 1944, expires on Midnight January 14, 1944, and that this Court may not rule upon the motion herein for a preliminary injunction prior to the expiration of the said temporary restraining order, it is, by the Court this 14th day of January, 1944

Ordered That the date of expiration of the temporary restraining order entered herein the 7th day of January, 1944, against the defendants be, and the same hereby is, extended for 10 days; Provided, That if an order is entered herein on the motion for a preliminary injunction prior to the expiration of 10 days, the said temporary restraining order shall expire upon the entry of the order on said motion.

S/ Jennings Bailey, Justice.

1-14-44.

[fol. 66]

[File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

L. P. STEUART & BRO., INC.,

vs.

CHESTER BOWLES, Administrator, Office of Price Administration, et al.

OPINION—Filed January 21, 1944

The plaintiff is a retail dealer in various types of fuel oil in the District of Columbia and nearby areas; the defendants are the Administrator of the Office of Price Administration and District officials of that Agency.

Proceedings were instituted against the plaintiff in accordance with the regulations of the O. P. A. in which the plaintiff was charged with numerous violations of the regulations of the O. P. A., charging it inter alia with failure to turn over to its supplier coupons required to be delivered by the regulations; with a discrepancy between the coupons which the plaintiff had in its possession as against the amount of fuel sold; and various minor irregularities in the selling of fuel oil. Hearings were had before the Hearing Commissioner who sustained some of the charges, and found in favor of the plaintiff as to others. Hearings were had on appeal to the Hearing Administrator, who sustained all the charges and entered the suspension order of which the plaintiff complains.

[fol. 67] The plaintiff has sued to enjoin the enforcement of the suspension order. A temporary restraining order was issued and the case has come on for hearing on the plaintiff's motion for an injunction pendente lite. At the hearing the defendants moved orally for a summary judgment upon the ground that there are no material issues of fact in dispute.

Section 2(a)(2) of the Second War Powers Act of 1942 provides:

"Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense."

Section 2(a)(8) authorizes the President to delegate these powers to any department, agency, or officer of the Government.

Under the powers delegated to it, the O. P. A. promulgated numerous regulations including those regulating the allocation and sale of fuel oil and providing for the suspension of allocations of fuel oil to those who failed to comply with its regulations and of the right to sell fuel oil. In the instant case the power of the plaintiff to receive or deliver fuel oil was suspended upon certain conditions for the period from January 15, 1944 to December 31, 1944.

The defendants contend that the O. P. A. has no power to suspend the plaintiff's dealings in fuel oil, that the action of the O. P. A. is a taking of property without due process of law and is not authorized by either the Constitution or by the Act of Congress. But I think that the power to allocate includes the power to re-allocate, or to put an end to an allocation. The power was given to the President to "allocate such material or facilities" (that is those for defense or for private account or for export) "in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense." If the agency which the O. P. A. may authorize to distribute the materials or facilities misuses its authority and privileges and violates [fol. 68] the regulations promulgated for its guidance and control, I see no reason why the O. P. A. should not revoke the allocations to and powers of the agency. If it can do this, it can do the lesser. If it can put an end to the allocation- it can suspend them. As has been well said by defendants' counsel in their brief:

"If the rationing regulations provided generally that only those dealers who in the past had observed the rationing regulations were eligible for allocations of rationed commodities * * * there could be little doubt that this provision would be an exercise of the statutory power to allocate and to prescribe the conditions for allocation."

The suspension order in this case is not like the suspension order issued by W. P. B. involved in the case of *B. Simon Hardware Co. v. Nelson* in the nature of a penalty or punishment for past conduct, but for the protection of the public as to future action, to prevent a continuance of the violations of the regulations of the O. P. A. made for the protection of the public. There can be no question of the necessity of the preservation of those materials which are necessary both to the carrying on of the war and the health and existence of the people of the country, and the powers given to the President and to those whom he has chosen to carry out these objects are necessary and proper in time of war.

I agree in general with the reasoning of the Circuit Court of Appeals of the Fifth Circuit in its opinion recently handed down in the case of *Brown, Admn. v. Williams, et al.*

The plaintiff has argued that this suspension order will interfere with the needs of other agencies of the Government, but apart from any other consideration it is enough to say that none of them has sought to intervene in this case.

The motion of the plaintiff for an injunction pendente lite will be overruled, the temporary restraining order dissolved, and there being no material issue of fact, and no claim in the complaint that there was no substantial evidence to support the findings of the Hearing Administrator, the motion of the defendants for summary judgment will be sustained and the complaint dismissed with costs.

/s/ Jennings Bailey, Justice.

[fol. 69]

[File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

L. P. STEUART & BRO., INC., a Corporation, Plaintiff,

v.

CHESTER BOWLES, Administrator, Office of Price Administration, Federal Office Building No. 1, Washington, D. C.; Robert K. Thompson, District Director, District of Columbia, Office of Price Administration, 5601 Connecticut Avenue, N. W., Washington, D. C.; John L. Laskey, District Enforcement Attorney, District of Columbia, Office of Price Administration, 5601 Connecticut Avenue, N. W., Washington, D. C., Defendants

JUDGMENT—Filed January 24, 1944

This action came on to be heard before this Court on January 14, 1944 upon plaintiff's motion for an injunction pendente lite, at which time all parties appeared through counsel and were heard.

Upon said hearing plaintiffs and defendants moved orally for summary judgment upon the ground that there were no material issues of fact to be tried and all parties consented that for the purpose of this case all material facts well pleaded in either pleading be taken as true; that there is no claim in the complaint that there was no substantial evidence to support the order of the Hearing Adminis-

trator, and that the order to be entered herein be a final one upon said oral motions of the parties.

[fol. 70] The Court adopts as its Conclusions of Law the opinion filed herein and makes this additional conclusion of law to-wit: .

The provisions of Section 1394, 5661, of Ration Order No. 11 do not preclude the issuance of the suspension ordered entered against the plaintiff in this case.

Adjudged and Ordered that the motion for an injunction pendente lite be and the same is denied; and it is further adjudged and ordered

That the temporary restraining order heretofore issued herein on January 7, 1944, be extended until January 26, 1944, at 12:00 midnight, in order to allow plaintiffs time to apply to the United States Court of Appeals for the District of Columbia for an injunction pending appeal herein, and that said temporary restraining order be dissolved at 12:00 midnight on January 26, 1944; unless otherwise ordered by said Court of Appeals and it is further adjudged and ordered

That defendants' motion for summary judgment be and the same is granted and that the complaint herein be and the same is dismissed with costs.

Jennings Bailey, Justice.

Dated: Jany. 24/44.

[fol. 71] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA—Filed January 24, 1944

Notice is hereby given that L. P. Steuart & Bro., Inc., plaintiff herein, hereby appeals to the United States Court of Appeals for the District of Columbia from the final judgment entered in this action on January 24, 1944.

(Sgd.) Renah F. Camalier, 1366 National Press Building, Attorney for the Plaintiff.

Service Acknowledged, January 24, 1944. (S.) Fleming James, Jr., Attorney for all Defendants.

[fol. 72] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER CONTINUING TEMPORARY RESTRAINING ORDER—Filed
January 26, 1944

On motion of the attorneys for the plaintiff and the consent of the attorneys for the defendants, it is, by the court, this 26th day of January, 1944,

Ordered that the temporary restraining order entered herein on January 7, 1944, be and the same hereby is continued until such time as the Court of Appeals has heard and determined the appeal from the judgment of this court entered on January 24, 1944.

(S.) Jennings Bailey, Justice.

We consent: (S.) Fleming James, Jr., (S.) Harry L. Shniderman, Attorneys for Defendants.

(Here follows 1 photolithograph, side folio 73)

CIVIL DOCKET

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

NUMBER

PARTIES

ATTORNEYS

ACTION FOR

TAXED COSTS

22634

S. P. Stewart & Bros, Inc.
a corp.

Ronald F. Camalier

Injunction

Attorney,

Marshal,

Clerk,

Witnesses,

Depositions,

Examiner,

Ct. Appls.,

vs.

Chester Bowles, Adm. O.P.A.

John L. Laskey

Robert K. Thompson, O.P.A.

" " "

John L. Laskey, O.P.A.

" " "

DATE

PROCEEDINGS

DEPOSITS

FEES

TOTAL

1944

Deposit for costs by— Camalier

Jan 7

Complaint exhibits (7)

Motion for temporary restraining order re P.O.A.

Motion for preliminary injunction re P.O.A.

Temporary Restraining Order re P.O.A. filed Jan 7, 1944

Order of the Court re P.O.A. filed Jan 7, 1944

10-

10.-

10-

filed

[fol. 74]

[File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO RECORD—Filed January 29, 1944

It is stipulated by and between the attorneys for the plaintiff, appellant, and the attorneys for the defendants, appellees, that the following are designated by both parties for the record on appeal:

1. The complaint, with all exhibits, namely, 1 to 7, inclusive.

2. Motion for temporary restraining order (without memorandum in support of motion).

3. Motion for preliminary injunction (without memorandum in support of motion).

4. Temporary restraining order entered herein on January 7, 1944.

5. Joint and several answers of all defendants filed herein January 14, 1944.

[fol. 75] 6. Order entered January 14, 1944, continuing temporary restraining order.

7. Opinion of Mr. Justice Bailey entered January 21, 1944.

8. Judgment entered January 24, 1944.

9. Notice of appeal filed herein January 24, 1944.

10. Consent order entered January 26, 1944, continuing temporary restraining order.

11. Docket entries herein.

12. This stipulation as to record.

(Sgd.) Renah F. Camalier, Attorney for L. P. Steuart & Bro., Inc., Plaintiff and Appellant.

(Sgd.) Fleming James, Jr., Harry L. Schniderman, Attorneys for all Defendants, (Appellees).

[fols. 76-77] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 78] IN THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA, JANUARY TERM, 1944

Before Honorable Justin Miller, Henry W. Edgerton and
Thurman Arnold, Associate Justices

No. 8677

L. P. STEUART & BRO., INC., a Corporation, Appellant,
vs.

CHESTER BOWLES, Administrator, Office of Price Adminis-
tration, et al., Appellees

MINUTE ENTRY OF ARGUMENT—February 4, 1944

Argument commenced by Mr. Renah F. Camalier, attor-
ney for appellant, continued by Mr. Fleming James, Jr.,
attorney for appellees, and concluded by Mr. Renah F.
Camalier, attorney for appellant. Appellant granted per-
mission to file a supplemental brief not exceeding ten
pages by February 8th.

[fol. 79] IN THE UNITED STATES COURT OF APPEALS, DISTRICT
OF COLUMBIA

L. P. STEUART & BRO., INC., a Corporation, Appellant,

v.

CHESTER BOWLES, Administrator, Office of Price Adminis-
tration, et al., Appellees

Appeal from the District Court of the United States for the
District of Columbia

Mr. Renah F. Camalier for appellant. Mr. Francis C.
Brooke also entered an appearance for appellant.

Mr. Fleming James, Jr.,* Director, Litigation Division,
Office of Price Administration, with whom Messrs. Thomas

I. Emerson,* Deputy Administrator for Enforcement; *David London*,* Chief Appellate Branch, *Harry L. Shniderman*,* Attorney, *John L. Laskey*, District Enforcement Attorney, and *Carl W. Berueffy*,* Enforcement Attorney, all of the Office of Price Administration, were on the brief, for appellees.

Before Miller, Edgerton, and Arnold, JJ.

OPINION—February 18, 1944

EDGERTON, J.:

This appeal is from the District Court's denial of an injunction to restrain the Office of Price Administration from enforcing a suspension order against appellant.

Appellant is, among other things, a large retail dealer in fuel oil. The Hearing Administrator of the Office of Price Administration found after a full hearing that appellant in violation of rationing regulations accepted great quantities of fuel oil from a supplier without surrendering valid rationing evidence, transferred great quantities to customers without receiving valid rationing evidence, and failed to keep required records. The suspension order forbids appellant to transfer fuel oil to customers or to receive delivery of fuel oil for resale, between January 15 and December 31, 1944; but with a proviso that if appellant furnishes a verified list of its customers during the pre-rationing year (October 21, 1941, to October 21, 1942), and surrenders all void or expired rationing evidence in its possession, it may transfer oil to any consumer whom it served during that year and may receive deliveries for that purpose. The order provides that it may be modified if modification becomes necessary in order to meet the [fol. 80] needs of the area. It also provides for an accounting by appellant of its fuel-oil transactions.

Appellant does not deny that the evidence supported the findings of the Hearing Administrator. The complaint and answer raise no issues of fact. The District Court rendered summary judgment dismissing the complaint, but continued a temporary restraining order pending this appeal.

* Appeared by authority of the Price Administrator.
7 Fed. Reg. 7910.

Appellant contends that there is no statutory authority for the suspension order. We think the District Court was right in finding such authority in the Second War Powers Act, 1942, which provides in § 2(a)(2): "Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense."¹ The suspension order is within the President's authority to "allocate."² As the District Court observed, the power to allocate includes the power to re-allocate, or to put an end to an allocation. All allocation has positive and negative aspects. What is allocated to some is allocated away from others. An order is equally an allocation whether it prescribes what A shall receive or, as in the case of this suspension order, what B shall not receive. The language quoted from the Second

¹ 56 Stat. 176, 178, 50 U. S. C. § 633 (Supp. 1942).

The President has delegated to the Office of Price Administration, and it has exercised, the authority to allocate fuel oil. By Executive Order 9125, the President conferred his authority over allocation under § 2(a)(2) of the Second War Powers Act on the War Production Board and confirmed War Production Board Directive No. 1, 7 Fed. Reg. 562, which lodged in the Office of Price Administration the Board's allocation power under the earlier acts. 7 Fed. Reg. 2719, 2720. By Supplementary Directive 1-0, the War Production Board expressly delegated to the Office of Price Administration authority over the rationing of fuel oil. 7 Fed. Reg. 8418. The Office of Price Administration then issued Ration Order 11, which deals in detail with this subject. 7 Fed. Reg. 8480. The Office of Price Administration delegated to its Hearing Administrator and Hearing Commissioners its incidental authority to issue suspension orders. General Order 46, 8 Fed. Reg. 1771. It also adopted procedural regulations governing their issue. Procedural Regulation 4, 8 Fed. Reg. 1744.

² *Brown, Administrator v. Wilemon*, — F. 2d — (C. C. A. 5th, Jan. 13, 1944).

War Powers Act is substantially the same as that in a previous act³ under which a number of suspension orders were issued. The practice of issuing such orders was brought to the attention of Congress when the Second War Powers Act was under consideration.⁴

Appellant urges that the suspension order is penal. If this were true it would not be conclusive, since Congress may confer upon administrative officers authority to impose penalties.⁵ But appellant contends that Congress has not in fact conferred penal authority upon the Office of Price Administration. For the purpose of the argument only, we accept this contention. It does not aid appellant, for the suspension order is remedial and not penal.

[fol. 81] A penalty is a punishment, an injury inflicted for punitive purposes. Appellant's suspension is undoubtedly an injury, but is not imposed for punitive purposes. It is a direct means to a fairer distribution of the limited supply of oil in accordance with the allocation program. Appellant had shown a strong inclination to disregard that program.⁶ It had not merely violated the program but had informed the Hearing Administrator, in effect, that it "conceived its first duty to be the supplying of its customers with oil and that conformity with the requirements of the rationing system was subordinate thereto."⁷ This comes to saying that appellant deliberately determined, as a matter of general policy, to meet what it considered the needs of its customers whether or not they had rationing evidence. Since violation of the law was willful, statutory penalties of fine and imprisonment might have been invoked. But instead of seeking to punish, the government sought to prevent. The suspension order is intended to limit, and does limit, appellant's temptation and opportunity to vio-

³ Act of May 31, 1941, 55 Stat. 236, which amended the Act of June 28, 1940, 54 Stat. 676.

⁴ *Perkins v. Brown*, — F. Supp. — (D. C., S. D. Ga., Nov. 15, 1943).

⁵ *Lloyd Sabaudo Societa v. Elting, Collector of Customs*, 287 U. S. 329, 334.

⁶ Appellant's violations of the program were in themselves ample evidence of an inclination to disregard it.

⁷ The language is the Hearing Administrator's. Appellant has not questioned its accuracy.

late the rationing program. The order therefore tends, in a most direct way, to promote the program. No doubt it tends also to promote the program in an indirect way by indicating that violation may not pay. But an incidental minatory effect does not turn a remedial order into a penal one. The fact that the suspension order protects the public directly, by allocating oil away from a dealer who is disposed to violate the rationing program and toward other dealers, sharply distinguishes it from fines and penalties.

*Hawker v. New York** illustrates the same general principle. That case involved a New York statute which forbade the practice of medicine to physicians who had committed felonies. A physician contended that it increased his punishment for an offense which he had committed before its passage, and that it was therefore, as to him, *ex post facto* and invalid. The Supreme Court rejected his contention. The Court held that the statute did not impose punishment for the former offense but merely prescribed a qualification for the practice of medicine, since its immediate purpose was to protect the public.*

The suspension order might well have been absolute. Instead, it is qualified so as to permit appellant to serve as many of its old customers as it can reach. The qualification cannot harm appellant and does not vitiate the order. Perhaps an arbitrary proviso might vitiate an otherwise valid order, but the actual proviso is not arbitrary. It is related to the rationing program. It will place appellant in a position similar to, though not so good as, that in which it stood when it embarked on its illegal course. Dealings with a limited group of known customers can be more easily conformed to the law, can be more easily policed, and offer less temptation to obtain business by disregarding the law, than unlimited dealings with the public.

[fol. 82] Appellant urges that the order will limit the sources from which government agencies may buy oil, and

* 170 U. S. 189.

* Similarly, suspension of members of stock exchanges and the like, for the protection of the public, is not penal. *Wright v. Securities & Exchange Commission*, 112 F. 2d 89 (C. C. A. 2d); *Nichols & Co. v. Secretary of Agriculture*, 131 F. 2d 651 (C. C. A. 1st); *Nelson v. Secretary of Agriculture*, 133 F. 2d 543 (C. C. A. 7th).

will require appellant to discriminate between would-be customers, contrary to earlier orders of general application. If there were a conflict between orders, presumably the later would control. But no order provides that government agencies may buy from dealers who are not authorized to sell, or that dealers must sell to customers who are not authorized to buy. Even if appellant's contentions to the contrary were sound they would not aid appellant, since litigants "to have standing in court, must show an injury or threat to a particular right of their own, as distinguished from the public's interest in the administration of the law."¹⁰

Affirmed:

[fol. 83]

Copy

[File endorsement omitted]

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA

L. P. STEUART & BRO., INC., a Corporation, Appellant,

vs.

CHESTER BOWLES, Administrator, Office of Price Admin-
istration, et al., Appellees.

Appeal from the District Court of the United States for
the District of Columbia

JUDGMENT—February 18, 1944

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

It is further Ordered by the Court that the order of said District Court continuing the temporary restraining order

¹⁰ *Perkins, Secretary of Labor, v. Lukens Steel Co.*, 310 U. S. 113, 125.

theretofore issued by that court until the determination of this appeal be, and it is hereby, dissolved effective February 25, 1944, on which date the mandate of this Court shall issue.

Dated February 18, 1944. Per Mr. Justice Edgerton.

[fol. 84]

[File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS

[Title omitted]

DESIGNATION OF RECORD—Filed February 21, 1944

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Original transcript of record of proceedings in the District Court of the United States for the District of Columbia, omitting Fuel Oil Rationing Regulations set forth at pages 29 to 134.
2. Minute entry of argument.
3. Opinion.
4. Judgment.
5. This designation.
6. Clerk's certificate.

Renah F. Camalier, 1366 National Press Building,
Washington, D. C. Francis C. Brooke, 1366 Na-
tional Press Building, Washington, D. C., Attor-
neys for Appellant.

Service acknowledged—no counter-designation.

(S.) Charles Fahy, Solicitor General.

[fol. 85] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 86] SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION FOR OMISSIONS FROM PRINTED RECORD

It is stipulated by and between Renah F. Camalier and Francis C. Brooke, attorneys for L. P. Steuart & Bro., Inc., Petitioner, and the Honorable Charles Fahy, Solicitor General of the United States, that the following portions shall be omitted from the printed record in the above matter:

1. Exhibit 3 to the complaint, being Ration Order No. 11 of the Office of Price Administration, which exhibit was omitted from the record certified by the Clerk of the United States Court of Appeals for the District of Columbia, and would have been pages 39 to 134, inclusive, of the certified record.

2. All of page 21, after the line beginning with the number "2", and all of pages 22, 23, and 24, to and including the line beginning with the number "187", and insert, in lieu thereof, the following: "Charges 3 to 187, inclusive, are set forth in the same manner as Charges 1 and 2, and relate to purchases from November 4, 1942, to May 28, 1943, both dates inclusive."

[fol. 87] 3. Exhibit 5 to the complaint, being pages 146 to 148, inclusive, of the certified record.

4. Exhibit 6 to the complaint, being pages 149 to 153, inclusive, of the certified record.

Renah F. Camalier, 1366 National Press Building;
Francis C. Brooke, 1366 National Press Building,
Attorneys for L. P. Steuart & Bro., Inc., Charles
Fahy, Solicitor General.

[fol. 88] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 3, 1944

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted, and the case is assigned for argument on Monday, May 1st, next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

DATE	PROCEEDINGS	DEPOSITS	FEES	TOTAL
1944	Deposit for costs by-- Camalier	10-	10-	10-
Jan	7 Complaint exhibits (7) filed			
"	7 Motion for temporary restraining order in P.A.			
"	7 Motion for preliminary injunction in P.A.			
"	7 Temporary Restraining Order in P.A. (copy mailed to Bailey) 5-			
"	8 Underwriting of 1-10-44 (copy mailed to Bailey) 10-			
"	13 Entry acknowledgment of service of Motion for Temporary Restraining Order, Preliminary Injunction and of Complaint by Lasky filed			
"	14 Joint and several answer of Lasky Bailey			
"	" Hearing motion for preliminary injunction, reported by Bailey			
"	" Gertrude Bloch, (O.P.A.) submitted Bailey			
"	21 Opinion of the Court by Bailey			
"	" Letter of 1-10-44; letter of 1-11-44; letter of 1-12-44			
"	24 Order granting motion for summary judgment & dismissing complaint with costs. Bailey (attys in ltr)			
"	24 Notice of appeal by Lasky (copy mailed to Bailey)			
"	24 Deposit by Camalier for clerk's costs on appeal 5- 5- 5-			
"	" Order allowing Lasky to make deposit of \$100.00 in lieu of bond on appeal 100-			
"	" Deposit by Lasky in lieu of bond on appeal (attys in ltr)			
"	" Preliminary Restraining Order & Deposit Bailey 75 75 75			
"	26 Order continuing temporary restraining order (attys in ltr)			
"	29 Stipulation by attys of record as to stipulation to record on appeal filed			